Sunshine Act Meetings

Federal Register
Vol. 53, No. 46
Wednesday, March 9, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Correction of Sunshine Act Notice

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on February 29, 1988 (53 FR 6057) of the regular meeting of the Farm Credit Administration Board (Board) scheduled to be held on Tuesday, March 1, 1988. This notice is to revise the agenda for that meeting: (A) To include items of discussion, and (B) to postpone Board action on other items to no later than the May 3 regular meeting.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary of the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for Tuesday, March 1, is revised—

(A) To include the following items:

Open Session

1. Conditional approval for a lending limit exception in regard to a term loan for the Basin Electric Power Cooperative;
2. Amendments to the Farm Credit Banks of Texas pension and thrift plans; and
3. Cash patronage distribution for the St. Louis Bank for Cooperatives; Louisville Bank for Cooperatives; and the Jackson Bank for Cooperatives.

(B) To reflect postponement of the following items:

1. Summary Prior Approval;
6. FCA Policy on Prior Approvals Concerning Farm Credit System Human Resources Management;
7. Proposed Changes to Retirement and Severance Plans for the First District, Tenth District and the Farm Credit Corporation of America;
8. CEO Salary Proposals for the Central Bank for Cooperatives and the Federal Farm Credit Banks Funding Corporation; and
9. Salary Changes for the Springfield Districts.

Dated: March 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–5194 Filed 3–4–88; 5:05 pm]

BILLING CODE 6705–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, March 15, 1988.

PLACE: Board Room (812A), Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Aircraft Accident Report: Skywest Airlines Swearingen Metro II and Mooney M20, Midair Collision, Kearns, Utah, January 15, 1987.
2. Railroad Summary Reports: Southeastern Pennsylvania Transportation Authority (SEPTA) Accidents in Philadelphia (12/10/86) and Ardmore (1/26/87), Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

March 5, 1988.

[FR Doc. 88–5201 Filed 3–7–88; 9:26 am]

BILLING CODE 7533–01–M

Corrections

Federal Register
Vol. 53, No. 46
Wednesday, March 9, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

[CFDA No.: 84.129]

Invitation for Applications for New Awards Under the Rehabilitation Long-Term Training Program for Fiscal Year 1988

Correction

In notice document 88-3070 beginning on page 4201 in the issue of Friday, February 12, 1988, make the following correction:

On page 4202, in the first column, in the table, the entry opposite "Client assistance program training" should read "80,000 to 120,000".

BILLING CODE 1505-01-D

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

Correction

In notice document 88-4456 appearing on page 6718 in the issue of Wednesday, March 2, 1988, make the following correction:

In the first column, between **DATE** and **SUPPLEMENTARY INFORMATION**, insert "**ADDRESS:** The meeting will be held at the Archivists' Reception Room, National Archives Building, 8th St. and Pennsylvania Ave., NW., Washington, DC.".

BILLING CODE 1505-01-D

Federal Register

Wednesday
March 9, 1988

Part II

Environmental Protection Agency

40 CFR Parts 122, 123, 124, and 501
National Pollutant Discharge Elimination System Sewage Sludge Permit Regulations; State Sludge Management Program Requirements; Notice of Reproposal and Proposal

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124, and 501

[OW-FRL-3279-2]

National Pollutant Discharge Elimination System Sewage Sludge Permit Regulations; State Sludge Management Program Requirements

AGENCY: Environmental Protection Agency.

ACTION: Notice of reproposal and proposal.

SUMMARY: On February 4, 1986, the Environmental Protection Agency proposed rules at 51 FR 4458 that would have required States to develop sludge management programs to assure that the use and disposal of sludge complies with the Federal sludge use and disposal standards. The February 4, 1986 proposed rule provided requirements for approvable State sludge management programs, for their submission, and for their review and approval by EPA. The regulatory program was designed to ensure the environmentally sound use and disposal of sewage sludge and assure that the Federal standards for sludge use and disposal promulgated under section 405(d) would be met.

On February 4, 1987, Congress passed the Water Quality Act of 1987 amending the Clean Water Act, which included significant changes to the sludge management provisions of section 405. In today's action the Agency is reproposing State sludge program requirements to include the additional requirements and directions established in the amendments. Today's notice also contains proposed revisions to the National Pollutant Discharge Elimination System (NPDES) permit requirements and procedures (Parts 122, 123, and 124) to incorporate sludge permitting and State program requirements.

DATE: Comments must be received on or before May 9, 1988.

ADDRESSES: Comments should be addressed to Debora Clovis, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Martha Kirkpatrick, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9529.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the Clean Water Act (CWA) has resulted in increased treatment of wastewater before discharge to surface waters and the generation of large quantities of residual sewage sludge as a by-product of wastewater treatment. Thus, the proper management of sewage sludge is becoming increasingly important as efforts to remove pollutants from wastewater have become more effective. In the United States, the quantity of municipal sewage sludge has almost doubled since the enactment of the Clean Water Act in 1972. Municipalities currently generate over 7.6 million dry metric tons of wastewater sludge per year, or approximately 32 kilograms per person per year. In addition, greater focus on surface water toxics control, as well as Resource Conservation and Recovery Act (RCRA) provisions such as the ban on land disposal of certain hazardous wastes (section 3004(d)) and the exclusion of discharges into municipal sewers from RCRA requirements (section 1004(27)), may result in increased volumes of toxic and hazardous pollutants that reach publicly owned treatment works (POTWs) and may adversely affect sludge quality.

Improper sludge management could lead to significant environmental degradation of land and air, and failure to dispose of sludge properly could have serious impacts on groundwater and wetlands, as well as human health impacts. Sludge management and the many different sludge disposal practices are linked to air, solid waste, ocean dumping, wetlands protection and pretreatment programs. Poor landfill and land application practices, as well as failure to ensure appropriate sludge quality, could result in sludge contaminants reaching groundwater and vulnerable wetlands areas. Concern for air quality and oceans necessitates proper controls over sludge incineration and ocean disposal practices. The interrelationship among these media requires a tightly constructed, comprehensive approach that closes environmental loopholes and assures that solving problems in one media will not create problems for another. In addition, the beneficial use of sludge as a soil conditioner and fertilizer cannot continue to increase if sludge quality is poor.

Prior to the enactment of the Water Quality Act of 1987, the federal authorities and regulations related to the use and disposal of sewage sludge were fragmented and did not provide States and municipalities with comprehensive guidelines on which to base sludge management decisions. Section 405 of the Clean Water Act required the development of sludge standards by December 1978, but did not specify how the standards were to be implemented. Standards developed pursuant to section 405 have been promulgated for cadmium, PCBs, and pathogens only (40 CFR Part 257). In addition, sludge is regulated under a number of other programs, such as new source performance standards and national emissions standards for hazardous air pollutants under the Clean Air Act, requirements for solid waste landfills under Subtitle D of the Resource Conservation and Recovery Act, (and Subtitle C if the sludge is hazardous) ocean dumping requirements under the Marine Protection, Research and Sanctuaries Act (MPRSA), and PCB controls under the Toxic Substances Control Act. These regulations often use different methodologies and approaches to sludge management.

Concerns about the potential environmental problems created by improper sewage sludge use and disposal and the lack of a comprehensive legislative framework governing sludge management led to the establishment of an intra-Agency Sludge Task Force (STF) by EPA in early 1982 to study and make recommendations for

Agency actions in the sludge management area. The STF, with representatives from EPA's Offices of Water, Air and Solid Waste, approached sludge management from a multi-media perspective. The STF developed the Agency "Policy on Municipal Sludge Management" (49 FR 24358, June 12, 1984). The purpose of the policy was to establish a consistent role in sludge management across all environmental media and all management practices and to establish the federal regulatory role in sludge management in the context of the role expected of both State and local governments.

The STF Policy established several important principles which continue to guide the Agency's approach to sludge management. It states, in part:

> The U.S. Environmental Protection Agency (EPA) will actively promote those municipal sludge management practices that provide for the beneficial use of sludge while maintaining or improving environmental quality and protecting public health. To implement this policy, EPA will continue to issue regulations that protect public health and other environmental values. The Agency will use all available authorities to ensure that States establish and maintain programs to ensure that local governments utilize sludge management techniques that are consistent with Federal and State regulations and guidelines. Local communities will remain responsible for choosing among alternative programs, for planning, constructing and operating facilities to meet their needs, and for ensuring the continuing availability of adequate and acceptable disposal or use capacity.

49 FR 24358.

II. February 4, 1986 Proposed Rule

On February 4, 1986, EPA proposed State Sewage Sludge Management Program Regulations (51 FR 4458). These proposed rules would have required States to develop sludge management programs to assure that the use and disposal of sewage sludge complies with the federal sludge use and disposal standards (the Part 503 technical standards) promulgated under section 405 of the Clean Water Act. These regulations were proposed pursuant to recommendations of the Agency's Sludge Task Force, which concluded that the best approach for sludge management would be to require each State to prepare a program to implement the sludge standards, which would then be reviewed for sufficiency by EPA. The regulations were proposed under the legal authorities of the Clean Water Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

The principal requirements of the proposed regulations were that the States would submit to EPA for review and approval a description of their existing sludge management programs with plans and schedules for improving them as necessary to meet the added requirements of the proposal. The proposal set forth minimum requirements for approvable sludge management programs and provided the procedural requirements for submitting, approving, revising and withdrawing approval of such programs.

These regulations were proposed prior to the February 1987 amendments to the CWA. Prior to those amendments, the CWA required that sludge standards be promulgated but did not specify a mechanism, such as a permit program, for implementing the standards. As such, the proposed regulations did not require that the sludge standards be implemented through permits. As discussed in further detail below, the Water Quality Act of 1987, which amended section 405, specifies that the Part 503 technical standards are to be implemented either through an NPDES permit, or through a permit issued under one of the federal permit programs listed under amended section 405(f)(1), or through permits issued pursuant to an approved State sludge program. Thus today we are reproposing regulations for approval of State sludge programs in accordance with the direction established by the 1987 amendments.

III. Water Quality Act of 1987

A. Implementation of Sludge Standards Through Permits

Section 406 of the Water Quality Act (WQA) of 1987, which amends section 405 of the Clean Water Act, sets forth for the first time a comprehensive program for reducing the environmental risks and maximizing the beneficial use of sludge. The basis of the program to protect public health and the environment from any adverse effects from sewage sludge is the development of technical requirements for sludge use and disposal, and the implementation of these requirements through permits. The WQA requires promulgation of sludge standards establishing acceptable levels of toxic pollutants in sewage sludge and management practices in two stages.

Before the technical standards have been promulgated, the amendments provide that the "Administrator shall impose conditions in permits issued to publicly owned treatment works under section 402 of this Act or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge" section 405(d)(4). (This and subsequent citations to the CWA are to the amended version which codifies the 1987 amendments.) In response to this directive to take immediate action, EPA and the States have begun to include sludge requirements in permits for POTWs as they are reissued.

After the technical standards have been promulgated, the amendments direct that any permit under section 402 of the Act (NPDES permits) issued to a POTW or any other treatment works treating domestic sewage shall include the sludge technical standards, unless such requirements have been included in a permit issued under Subtitle C of RCRA, Part C of the Safe Drinking Water Act, MPRSA, or the Clean Air Act, or

> under State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of this section [405].

Section 405(f)(1). The amendments further provide that the Administrator may issue separate permits that implement the sludge requirements to treatment works which are not subject to section 402 of the Act (NPDES) or to any of the other listed permit programs or approved State programs. Section 405(f)(2). Such permits are referred to as "sludge-only" permits.

The 1987 amendments give new direction for the regulation of sludge management activities on several fronts. First, section 405 now clearly mandates that NPDES permits, whether issued by EPA or by an approved NPDES State, must contain conditions implementing the sludge technical standards to be promulgated by the Agency, unless those standards have been included in a permit issued under one of the listed federal programs or under a State program approved for administering a section 405(f) sludge permitting program. Therefore, a State which seeks EPA approval to administer a sludge permitting program can choose to do so through its NPDES program or through another sludge permitting program (e.g., solid waste programs), so long as the permit implements the sludge technical standards promulgated under section 405. Second, the amendments establish that the sludge standards will apply to any treatment works that treats domestic sewage, not just publicly owned treatment works or treatment works that treat primarily domestic

waste. These treatment works may be subject to sludge standards even if they are not otherwise required to obtain NPDES permits.

The 1987 amendments also strengthen the provisions for enforcing against violations of section 405 or permits implementing regulations promulgated under section 405. Section 405(e) provides that:

> it shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.

Congress also amended section 309(c) of the CWA to provide, for the first time, criminal penalties for negligent or knowing violations of section 405 or permits implementing the requirements of section 405. The Administrator's new authority to assess administrative penalties for violations of the CWA also covers violations of section 405 and implementing regulations and permits. Section 309(g).

In addition, section 308 of the CWA, which establishes the Administrator's authority to require monitoring, reporting and recordkeeping and to inspect and sample to determine compliance with the CWA has been amended to specifically reference section 405. *See* section 308(a)(4), as amended by section 406(d) of the WQA. Other provisions amended by section 406(d) of the WQA include section 505(f) (citizen suits for violations of regulations under section 405(d)) and section 509(b)(1)(E) (judicial review of regulations promulgated under section 405).

B. Sludge Technical Standards (40 CFR Part 503)

The major purpose of today's rulemaking is to develop a program to protect public health and the environment from improper sludge use and disposal and to implement the sludge technical standards established pursuant to section 405(d) of the CWA. The sludge technical standards for the use and disposal of non-hazardous sewage sludge will be proposed in a separate rulemaking and will be codified at 40 CFR Part 503. The Part 503 standards will address the land application, distribution and marketing, landfilling, incineration, and ocean disposal of sewage sludge. Generally, the standards will specify limits on pollutants of concern in sewage sludge that may interfere with its safe disposal and identify management practices that mitigate the migration of pollutants from a particular end use into and through the environment. In sum, today's proposed rule establishes the programmatic and procedural framework for implementing the sludge technical standards. Today's proposed rule does not change the status of existing federal technical requirements applicable to sludge use and disposal, such as 40 CFR Part 257. Those requirements will remain in effect until revised through separate rulemakings.

IV. Discussion of Today's Proposed Rule

A. General

The purpose of today's proposed rule is to establish a national program for sludge use and disposal by establishing State program requirements, conditions and procedures for sludge permitting. Today's proposed rule contains four principal sections. First, 40 CFR Part 122 is proposed to be revised to add permitting requirements to accommodate the regulation of sewage sludge use and disposal through NPDES permits. Second, 40 CFR Part 123 is proposed to be revised to include requirements for State sludge management programs for States that wish to implement the sludge requirements through their NPDES program. Third, today's proposal would add Part 501, which contains the requirements and submission procedures for State sludge management programs that are not part of a State NPDES program. Fourth, 40 CFR Part 124 is proposed to be revised to add procedural requirements for sludge permitting.

1. Minimum State Program Requirements

Today's proposal sets forth minimum requirements for approvable State sludge management programs, whether the State uses NPDES or another authority. Section 405(f) of the CWA gives EPA broad discretion to promulgate regulations which establish requirements for approvable State programs that assure compliance with any applicable requirements of section 405.

As proposed today, State section 405 sludge programs are not mandatory. All NPDES permits must contain the sludge standards mandated by CWA section 405(d) unless they are addressed under another federal permit or a permit issued pursuant to an approved State sludge program. However, a State is not required to submit a section 405 sludge program for approval. If the State does not have an approved program, EPA would issue the sludge permit. This is a significant departure from the February 4, 1986 proposal in which States would have been required to develop and submit sludge programs for approval. In the 1987 amendments to the Clean Water Act Congress authorized, but did not expressly mandate, that States develop section 405 sludge programs. (By contrast, when Congress amended the Clean Water Act in 1977 and added requirements to develop pretreatment programs, Congress expressly mandated that States with existing NPDES programs modify those programs to add pretreatment authority.) EPA interprets this failure to expressly mandate the development of State sludge programs to mean that Congress intended that they be optional. However, as stated in EPA's 1984 "Policy on Municipal Sludge Management," it is EPA's policy that sludge management is a local concern and thus should be handled at the State and local level, within the context of broadly-established national objectives. Therefore, EPA will encourage the States to develop approvable sludge programs, through such mechanisms as the continuing planning process and section 106 work program development. The Agency invites comment on whether State sludge programs implementing Section 405 should be required.

The most important requirement for an approvable State sludge program under section 405 is the authority to issue permits implementing the Part 503 technical standards, because the CWA requires State sludge programs to implement sludge standards through permits issued to POTWs and other treatment works treating domestic sewage.

A State program would include provisions for compliance monitoring including the authority to: Conduct inspections of sludge management facilities; require the operator to maintain records; have access by the State agency to records and monitoring equipment; and require periodic monitoring and reports from the permittee to the State agency. In addition, the State would need the authority to take enforcement actions and impose civil and criminal penalties against violators of the Part 503 technical standards and permits implementing sludge requirements.

Today's proposal also sets forth requirements for citizen participation. A State would have to provide public access to operator information unless such information is protected as confidential (*see* 40 CFR Part 2). Public notice of and opportunity to comment on proposed permits must be provided. Today's proposal would also require that the State provide for public participation in enforcement.

2. Program Submission

Today's proposal sets forth the basic components of a program submission. The first of these is the program description of the scope, structure, coverage, and processes of the State program. This would include: An identification of the lead agency responsible for implementing the sludge program, including staffing and organization; a description of the resources and costs of the program; a description of applicable State procedures; copies of permit, application and report forms; a description of the State's compliance tracking and enforcement program, and an inventory of all facilities required to obtain a sludge permit (POTWs and other treatment works treating domestic sewage).

The State also would submit a statement from the State Attorney General setting forth the State's legal authority to carry out the required program. This would include citations to specific statutes, regulations, and where applicable, judicial decisions.

Finally, the program submission would contain a Memorandum of Agreement (MOA) between the State Director and the EPA Regional Administrator. This document would set forth the State's plans to administer the sludge program and EPA's program oversight, and would include provisions for the transfer of information, proposed permits, reports, etc., between the Regional Administrator and the State. State sludge programs would be submitted to the appropriate EPA Regional office for review and approval, subject to concurrence by EPA Headquarters.

B. Part 501: State Sludge Management Program Regulations: Non-NPDES

1. General

As discussed earlier in this preamble, EPA proposed Part 501 regulations on February 4, 1986, that would have required States to develop programs regulating sludge use and disposal. Today's notice reproposes State sludge management program requirements based on the authority and program direction provided in the Clean Water Act amendments of 1987. Thus, while much of the substance of the earlier proposal is retained, there are a number of significant changes due to both the changes mandated by the Act and in response to comments on the February 4, 1986 proposed rule. This portion of the preamble is a section-by-section analysis of proposed Part 501. Part 501 applies only to those States that will not be regulating sludge through their NPDES programs (i.e., States without NPDES programs and States with approved NPDES programs which choose to implement a sludge program separate from their NPDES program). NPDES States that wish to incorporate sludge permitting into their NPDES program would submit such program for approval as a program modification under 40 CFR 123.62. Similarly, States seeking initial approval of an NPDES program which includes sludge would be subject to Part 123, rather than Part 501.

In developing proposed Part 501, the NPDES program was used as a basis, while attempting to make program requirements as flexible as possible so that States with existing, effective permit programs with different procedures would be approvable. Some States may be using a program that has been approved by EPA under another authority as a mechanism to regulate sludge, such as a State Solid Waste Management Plan under Subtitle D of RCRA. Such programs would be reviewed under Part 501 for their ability to implement section 405 of the CWA. There may be minor procedural differences between Part 501 and the approved program; the Memorandum of Agreement between the Regional Administrator and the State Director may be one means of resolving these differences.

2. Purpose, Scope and General Program Requirements

Subpart A of part 501 sets forth the intent and general requirements for EPA to approve State sludge programs as adequate to implement section 405. In accord with Congressional intent in enacting the section 405 amendments, States that seek to administer a State sludge program in lieu of the federal program generally must have authority as broad as EPA's to regulate sludge use and disposal. This would include the legal authority and programmatic capability to implement a permit program for the use and disposal of sewage sludge, to implement and enforce the Part 503 technical standards and any other Federal sludge standards (e.g., 40 CFR Part 257), and generally to take action to protect the public health and environment from adverse effects of toxic pollutants in sewage sludge.

Today's rule proposes that the State must issue sludge permits to all POTWs and other treatment works that treat domestic sewage. The requirement potentially includes numerous small facilities (for example, non-discharging, privately-owned domestic sewage treatment works) not previously regulated under any existing State or federal program and thus raises concerns about the additional resources that would be needed to fulfill the permitting requirement. EPA solicits comments on alternative ways of regulating these types of facilities other than through individual permits. Some possibilities include rules of general applicability and general permits. EPA also encourages States to submit any data they have on the number of such facilities in their States and the amount and kind of sludge they produce.

It is important to note that, in addition to requiring permits for POTWs and other treatment works treating domestic sewage, the amendments to section 405 make it illegal for *any person* to use or dispose of sewage sludge except in accordance with the technical regulations. Thus a State program must, at a minimum, require permits that cover all applicable requirements of the technical standards, including any that pertain to the activities which occur at disposal sites for POTWs and other treatment works treating domestic sewage. In addition, because the technical standards will apply to all users and disposers, the State program must include some provisions for enforcing the technical standards against these users and disposers as well. Thus, today's proposal includes a general requirement that States have provisions for regulating all users and disposers of sewage sludge, whether or not such users or disposers are required to obtain a permit. In today's proposal such other users and disposers are not required to have permits, although some of them may be required to have permits in the final rule. For example, the final rule may require some type of permit mechanism for regulating contractors who purchase sludge from a POTW for distribution and marketing to the public and for sludge incinerators that don't generate sludge themselves. (This possibility is also discussed below in the discussion about expanding the scope of the Part 122 permitting program to include sludge regulation.)

A number of States currently provide some type of regulation of "other users," ranging from permits to directly enforceable rules of general applicability. Other possibilities for regulating users include general permits, certifications of compliance, written releases acknowledging liability for compliance with the technical standards, and requiring the POTWs to regulate the users and disposers of its sludge through approved local programs similar to local pretreatment programs for regulating industrial users of POTWs. The agency is soliciting

comments on effective means of regulating other users and disposers of sewage sludge that are not "POTWs and other treatment works treating domestic sewage."

A State sludge program may be administered as part of an existing State program (e.g., the State solid waste management plan) or it may be a separate section 405 sludge program, so long as it meets the requirements of the Part 501 regulations. States are, of course, free to adopt more stringent or more extensive requirements under section 510 of the CWA. State programs will be reviewed for their ability to meet the requirements of the Act and to ensure that there are no State provisions which may undercut or hinder implementation of the program, such as unauthorized variances from technical standards.

Assignment of Program Responsibilities (§ 501.1(d))

In some States, local agencies such as local health departments and soil conservation or agricultural extension offices play a significant role in carrying out various sludge management activities. In most cases, today's proposed rule would allow decentralized administration of State sludge programs to continue undisturbed. Where the local agencies are part of a State agency, they would be considered "field offices" of the State agency and questions about the propriety of assigning program responsibilities to them normally would not arise. The State would, however, be expected to identify the roles of field offices in describing how it will carry out program responsibilities, and, if more than one State agency is involved, designate a lead agency.

Today's proposal (§ 501.1(d)) would also generally allow States seeking approval of their sludge programs to maintain existing decentralized administration of sludge programs even where the local agencies are not part of a State agency. This is in keeping with the Agency's general policy of minimizing disruption to existing State programs. Also, because proper sludge disposal may often depend on local conditions and disposal site characteristics, the knowledge and proximity of local agencies to regulated activities can enhance efficient and effective administration of program responsibilities. Accordingly, today's proposal would generally allow the State sludge management agency to assign program responsibilities to local agencies.

However, today's proposal would not allow separate approval of local programs (by the State or EPA) nor relieve the State agency of overall responsibility for program administration. It also would not allow a State to assign program responsibilities to a local agency under control of a political subdivision that also owns or operates a POTW or other facility that treats or disposes of sewage sludge. This restriction is intended to avoid a conflict of interest situation with the local agency playing dual roles of regulator and regulated party. Beyond these broad parameters, the proposed rule does not specify the extent to which a State agency may use local agencies to carry out program responsibilities. EPA solicits comments on whether limitations should be established to guard against potential problems such as inconsistent application of program requirements within the State.

EPA is particularly concerned about potential conflict of interest situations where local agencies executing sludge responsibilities are part of the same political subdivision or other governmental entity with authority over POTWs or other sludge treatment or disposal facilities. Therefore, EPA also solicits comments regarding the roles of local agencies in existing State sludge programs, including the various functions they perform (e.g., permitting, compliance monitoring, enforcement), the extent to which they are the final decision-makers, and their relationships to State agencies, POTWs, and other sludge treatment and disposal facilities.

Under today's proposal, any assignment to local agencies must be well documented and supported in the State's submission for program approval. States would also be expected, through provisions in the MOA, to assume oversight responsibilities to ensure that the assignment is carried out properly. In addition, to assure that EPA could effectively carry out its oversight responsibilities in local delegation situations, the lead State agency would remain responsible for all program reporting and other activities related to EPA oversight of the State's approved program (e.g., submission of proposed permits for EPA review). Finally, State agencies would be required to retain all necessary authority to carry out program responsibilities so that they could step in where local agencies are not adequately performing assigned functions.

Partial Programs

Prior to the passage of the Water Quality Act in February 1987, partial NPDES program approvals were prohibited. A State wishing to obtain NPDES approval was required to seek approval of the entire program: NPDES, pretreatment, and regulation of federal facilities. Section 403 of the WQA (codified at section 402(n) of the Clean Water Act) authorizes two types of partial program approvals. The first type, the "major category partial permit program" is a partial program in which all discharges under the jurisdiction of a department or agency of the State are covered by the program. In the case of section 405 sludge programs, this would allow a State to seek a partial program approval if one agency has responsibility for regulating a particular sludge use or disposal method, and the State only sought to administer this program. For example, where all the sludge incinerators in the State are regulated by the State agency responsible for air programs, partial program approval could be sought for the State's sludge incinerator program. That program would be evaluated and approved based on its adequacy to meet all of the requirements of CWA section 405 (i.e., the State program requirements in Part 501) and to implement the Part 503 technical standards for those facilities under the Agency's jurisdiction. The approved State would then issue permits that implement the standards to all sludge incinerators, and EPA would be responsible for permitting all other sludge facilities in the State.

It is important to note that there may be circumstances where approval of a partial program would *not* be consistent with Congressional intent. For example, if a State has reorganized its administrative agencies simply to avoid a controversial or resource-intensive activity, EPA may decline to approve the State's program.

With the "major category" type of partial program, the State would not be required to obtain approval of a complete section 405 sludge program to maintain approval of its partial program. It would also be possible for a State to have two partial programs. EPA solicits comments on whether it should allow "major category" partial programs under Part 501 or whether it should instead require States with jurisdiction over sludge disposal split among various agencies to designate a lead agency and operate an entire program under an intra-State agreement.

The second type of partial approval authorized is the "major component partial permit program." This type of partial program provides for phased assumption by the State of major NPDES program components. Under this approach, the statute requires the State to submit a plan for assumption of full

program administration within five years of the date that the first phase is approved. CWA section 402(n)(4). Thus, the State could seek and obtain approval for its NPDES program first, and phase in approval of the pretreatment and federal facilities program components over five years.

Like pretreatment and federal facilities programs, a sludge program is a "major component," and cannot be broken down into smaller "major components." However, as proposed today, sludge programs, unlike federal facilities and pretreatment programs, are optional with the State. Therefore, a State that wants to phase in its NPDES program over five years must assume federal facilities and pretreatment, and may (but is not required to) include a complete sludge program as a component.

Today's notice does not contain any proposed regulatory language addressing partial programs. EPA will be proposing regulations governing the general requirements for partial program approvals as part of its general NPDES revision package. While comments are invited on today's preamble discussion of partial sludge programs, there will be another opportunity to comment when the general revisions to the NPDES program regulations are proposed.

Section 501.2 Definitions. Section 501.2 provides definitions for terms as they are used in Part 501. The terms "distributor," "septage," "sewage sludge," "use" or "utilization practice," and "users" are intended to be consistent with definitions used in the forthcoming technical regulations (40 CFR Part 503). The definition of "treatment works" is taken from section 212 of the CWA.

Part 501 defines a "Class 1 Sludge Management Facility" to be any sludge facility classified as such by the Regional Administrator in conjunction with the State Director. Class 1 Sludge Management Facilities are analogous to NPDES "major facilities" (see 40 CFR 122.2). They are a permitting priority and generally are subject to more stringent reporting and monitoring requirements. As with NPDES majors, under today's proposal the actual classification of facilities as Class 1 would not be done through rulemaking, but rather would be determined through a negotiated process between the Region and the State administering an approved program. This would allow flexibility for targeting efforts on areas of specific concern to the State (e.g., disposal on or near ecologically sensitive areas such as estuaries) and on particular facilities with known or suspected problems with their sludge. Where information available to EPA suggests that particular classes of facilities or practices are of concern on a national basis, EPA may issue national guidance on Class I determinations. For example, it may be appropriate to focus attention on sludge incinerators (because available information suggests that these facilities may have greater potential to threaten the environment) and on major POTWs required to have pretreatment programs under 40 CFR 403.8 (because facilities are so classified on the basis of their size and industrial contribution). These and/or other classes of facilities may become part of initial or subsequent Class I identification.

EPA invites comment on the process for identifying Class I facilities contained in the definition of "Class I management facility" proposed today.

Section 501.3 Coordination with other programs. A facility's sludge operation is closely linked to its wastewater treatment processes and other treatment activities. This section would allow States to coordinate their sludge programs and jointly issue permits with other State or Federal environmental programs where appropriate to promote efficiency in the process and consistency among the various requirements regulating the facility's waste treatment operations. For example, POTW permit issuance could be coordinated where a State has separate NPDES and sludge management programs.

3. Development and Submission of State Programs

Section 501.11 Elements of a sludge management program submission. This section summarizes the basic components of a program submission, each of which are described in greater detail in subsequent sections. The essential components of a program submission are: a letter from the Governor requesting program approval, a description of the State's sludge management program, a statement of the State's legal authority to implement the program from the Attorney General, and a Memorandum of Agreement (MOA) between the Regional Administrator and the State Director. This section provides that EPA will determine whether the State program submission is complete within 30 days of receipt of the program submission. EPA then has 90 days from the date of the completeness determination to review and decide whether to grant or deny the State's request for program approval. EPA will approve programs which meet the requirements of this Part and section 405 of the CWA.

Section 501.12 Program description. This section provides a detailed discussion of the nature and contents of the program description. The program description is the primary mechanism by which the State explains how it intends to administer its sludge program. While the legal authorities define the State's intended implementation, the program description describes the State's processes and policies, such as how the State plans to structure its enforcement program. The program description should explain how the program is adequate to meet the essential requirements of CWA section 405: to implement the technical standards through permits and to protect public health and the environment from adverse effects from pollutants in sewage sludge.

The description must include an explanation of the organization and structure of the agency or agencies that will be administering the program, including the number and general responsibilities of the employees. The description must also contain a discussion of the estimated costs and available resources for administering the program. These resource requirements are more extensive than what was proposed on February 4, 1986, because a resource discussion is essential in order to evaluate the State's capacity to implement the program as envisioned by Congress. EPA is soliciting comments on whether cost and resource factors are an appropriate measure of the State's capacity to implement the program.

The program description includes a description of applicable State permitting, administrative, and judicial review procedures. This includes a description of any administrative review or appeal procedures and criteria, as well as procedures and criteria for any variances available under State law. The program description must also contain copies of application and reporting forms.

Another important requirement is the facility inventory. Today's proposal would require that the State include in the program description a complete list of all POTWs or other treatment works treating domestic sewage, i.e., all facilities that are required to obtain sludge permits. (Note: As discussed elsewhere in this preamble, the categories of facilities required to obtain permits may be expanded to include other regulated parties. In this case, the inventory requirement would be correspondingly expanded to include all facilities or parties required to obtain a permit.) This is considerably pared

down from the February 4 proposal which would have required an inventory of all sewage sludge generators and sewage sludge disposal facilities in the State, including firms which pump and service septic tanks and portable toilets.

The States will be expected to complete an inventory of all generators and disposal facilities and sites. The program description should explain how and when the State's inventory will be completed and the State's plan for maintaining the inventory. However, under today's notice only those facilities required to obtain permits must be identified on the inventory as a *precondition* to program approval.

The States also are asked to identify whether they have a separate program to regulate septage disposal. The February 4 proposal would have required a more extensive description of the State's septage disposal program. Several commenters on this earlier proposal remarked that septage is different from sludge and that it was not necessary to include requirements for septage in a sewage sludge management program.

In today's proposal, how a State regulates septage is only significant for the purposes of its section 405(f) sludge program, in that its program must ensure that where septage is disposed of in the same manner as sludge (e.g., applied to land), it is subject to the same requirements as sewage sludge. Thus, today's rule will be consistent with the forthcoming proposed Part 503 regulations including "septage" within the definition of "sewage sludge," so that where septage is used or disposed of as sewage sludge it would be subject to the same standards as sewage sludge. Beyond this coverage, how the State does or does not regulate septage would not have to be addressed in its sludge program under today's proposal. For example, septage that is transported to a POTW for treatment need not be covered under the State's sludge management program, since the POTW's sludge would be regulated.

Section 501.13 Attorney General's Statement. The Attorney General's Statement is where the State demonstrates its legal authority to carry out the program implementation requirements set forth in this part. The Attorney General (AG) certifies that in his or her opinion, the laws of the State provide adequate authority to carry out the program. The Attorney General's Statement would include a discussion of the State's legal basis for conducting each aspect of the program and address any significant difference between State and federal law. It would cite to the specific statutory and regulatory provisions that give the legal authority for each program element, and explain how each citation provides the requisite authority. All referenced State statutes and regulations would have to be in full force and effect by the time the program is approved.

The Attorney General's Statement must be signed by the Attorney General or a representative of the AG who is authorized to sign and can bind the State by so doing. Alternatively, the Statement may be signed by an independent legal counsel. To qualify as an independent legal counsel, the signatory must have full authority to represent the State agency in court on all matters, including defending actions against the State and bringing actions to enforce against program violations. The February 4 proposal stated that the Statement would be signed by the AG "or appropriate legal counsel," which EPA now regards as not specific enough in requiring that the legal counsel must have full authority to represent the State agency.

Section 501.14 Memorandum of Agreement (MOA). The program description and the MOA, taken together, should explain program operation and clearly define the respective roles of EPA and the State, (and local agencies, if appropriate), so that by examining these two documents EPA or the public can fully understand how the program will be run. Some overlap between the content of the two documents is expected since both address areas such as compliance monitoring, enforcement, permit issuance, and transfer of information. However, the two documents have different long-term roles. The program description provides a narrative explanation of program administration. The MOA is designed to be a long-term outline of these programmatic duties in the form of a binding agreement between EPA and the State. It establishes the parameters for ongoing program administration.

The MOA establishes the basis for cooperation and coordination between the State and EPA and for ensuring that the program is administered in an effective manner consistent with the objectives of the Clean Water Act. The MOA defines the State/EPA relationship and denotes the responsibilities of each party. It charts the procedures EPA and the State will follow in carrying out these various responsibilities and generally defines the manner in which the sludge management program will be administered.

The MOA should begin with a statement of the basis and implications of the Agreement, and must affirm that the State program will be managed in accordance with State and Federal statutes. The main body of the MOA consists of a listing of the responsibilities and procedures which will be used to ensure coordination between the State and EPA.

In addition, the MOA is to include provisions for transferring from EPA to the State, permit applications and other program information. In the MOA, EPA and the State will specify the classes or categories of permits that will be sent to EPA for review and comment, and the classes of permits for which such review will be waived. EPA may waive review of any class of sludge permits except for Class 1 Sludge Management Facilities. This is significantly pared down from NPDES, which lists several classes of dischargers for which review cannot be waived. *See* 40 CFR 123.24(d). On the basis of EPA's experience with NPDES, the Agency today is proposing that the waiver of review be prohibited only for a narrow class of permits, those for Class 1 Sludge Management Facilities. The MOA must also provide for termination of the waiver, for individual permits or classes of permits, at the written direction of the Regional Administrator.

Today's rule proposes that the procedures and requirements in § 123.44 governing EPA review of State-issued NPDES permits, including EPA's authority to object to, and, where necessary, veto permits that are outside the guidelines and requirements of the CWA, generally apply as well to permits issued under State programs approved under Part 501. Although the CWA does not specifically address EPA veto of State-issued permits with inadequate sludge provisions, it does grant EPA broad authority to establish State program requirements as necessary to assure compliance with section 405 requirements. CWA, section 405(f)(1). Based on past experience in other programs, EPA believes that the ability to veto State-issued permits which do not adequately implement federal standards is an important tool for effectively assuring that State programs implement minimum federal requirements. This approach is also consistent with that in the NPDES program where EPA has authority to veto State-issued NPDES permits that are outside the guidelines and requirements of the Act (including those implementing sludge standards). EPA sees no reason why the availability of a veto authority should depend on whether a State sludge program is

approved under the NPDES program in Part 123 or separately under Part 501.

The MOA shall also set forth the frequency and content of reports the State will submit to EPA (§ 501.14(b)(5)). This provision is similar in breadth and scope to NPDES (40 CFR 123.24(b)(3)). It is not a separate requirement, but rather is to be read in conjunction with the specific requirements regarding information transmittal from the State to EPA. For example, the MOA would identify that the State will transmit to EPA a copy of permit applications for which review has not been waived within, for example, five days of receipt.

The MOA also will contain an agreement that the State will allow EPA to routinely review relevant State records, reports and files. Provisions on the State's compliance monitoring and enforcement program, such as coordination with EPA on inspections and on enforcement activities, must also be addressed in the MOA.

Section 501.15 Requirements for Permitting. This section sets forth the specific requirements for ensuring effective permitting programs. It is divided into four principal subsections. Subsection (a) specifies general requirements the State must be able to implement and standards for program implementation. Subsection (b) outlines boilerplate provisions which all permits must contain. Subsection (c) contains provisions for permit actions such as transfers, modification, revocation and reissuance, and termination. Subsection (d) contains the procedures for permit issuance, primarily public input into the issuance process.

Section 501.15(a)(1) deals with confidentiality of information, a very important provision balancing the public interest in access to information and the permittee's interest in confidentiality. The State may protect information claimed confidential, except that it must deny such claims for: (1) The name and address of the permittee, and (2) permits, permit applications and effluent data. This proposal is consistent with the confidentiality rules in the NPDES program (§ 122.7), which are mandated by sections 308 and 402(j) of the Clean Water Act.

Section 501.15(a)(2) proposes information the permit applicant would provide in applying for a sludge permit. General information requirements would include name, address, and location, and an identification of the activities which bring the facility under the jurisdiction of section 405. The applicant must also identify whether it is subject to any of the listed environmental permit programs. This is important in order to provide notice of the sludge permit to other affected programs and to determine whether some Part 503 requirements are already included in other permits.

More specific information requirements would include a topographic map of the treatment works property which depicts the location of any sludge management facilities, including on-site disposal sites. Applicants would also have to describe their sludge use and disposal practices as this will be the basis on which limits are established under Part 503. The description of sludge use and disposal practices would include a specific identification of the sites where the applicant proposes to transfer sludge for treatment and/or disposal as well as the names of applicators, distributors, or other contractors that will handle the disposal of the applicant's sludge. In the case of sludge or sludge products (e.g., compost) which are distributed and marketed to the general public, the permit applicant would identify the distributor, if different from the applicant. This information will be important for purposes of tracking the sludge to ensure that it is properly managed as provided for in applicable federal standards. Applicants must also state their annual sludge production volume.

The proposed rule also contains general requirements for applicants to submit available data on sludge quality and ground water monitoring. Additional information may also be necessary in order for the permit writer to ascertain compliance with the Part 503 standards. Accordingly, the proposed rule requires the applicant to submit any information required to determine the appropriate standards to be used for permitting under Part 503. States would also need the authority to require the applicant to submit any other information the Director may reasonably require to assess the sludge use and disposal practices, for example where permits are developed on a case-by-case basis.

The State must have the authority to require the applicant to keep records of relevant data and information submitted with the permit application for three years. This record retention time is consistent with that required in other Federal environmental programs, including NPDES. (**Note:** It also coincides with the Paperwork Reduction Act and implementing regulations (44 U.S.C. 3507; 5 CFR 1320.6(f)), which generally recommend a record retention time of three years.) The Agency solicits comments on whether record retention time should be increased, for example to five years to correlate with the typical permit term.

Paragraph (a)(4) proposes that permit applications be signed in accordance with the requirements set forth in 40 CFR 122.22. This is necessary to ensure that the person signing the forms has the authority to speak for and legally bind the permittee.

Paragraph (a)(5) proposes that sludge permits be for a term of up to five years. Because many of the requirements will be new, the Agency feels that a longer permit term would be inappropriate. The State may, of course, write permits for a shorter term.

Paragraph (a)(6) provides that schedules of compliance may be used (but are by no means mandatory) except that a State may not issue a permit with a compliance schedule which goes beyond the statutory deadline. CWA section 405 mandates that compliance with the Part 503 technical standards be achieved by one year from the date of their promulgation, except where the standards would require major construction, in which case the permittee has up to two years to achieve compliance. Because the statutory compliance deadlines are relatively tight, permit compliance schedules after promulgation of the Part 503 standards will most likely be used only for facilities requiring major construction (i.e., those which have a two-year statutory compliance deadline). Where a compliance schedule goes beyond one year, this section would require interim requirements and reporting, to ensure that the permittee is on schedule.

Paragraph (a)(7) discusses conflict of interest. It is taken directly from § 123.25(c) of the NPDES regulations and would require that no member of a board or body which approves a permit receives or has for the past two years received income from permit holders or applicants. Under the NPDES conflict-of-interest regulations (and the proposed rule in Part 501), State agencies or departments are not considered "permit holders or applicants for a permit." § 123.25(c)(iii). Without this exemption, many States could not administer an approved NPDES program because State agencies often hold NPDES permits. A similar exemption for Federal agencies or departments is being considered and may be addressed in the forthcoming proposed revisions to the NPDES regulations. Municipalities, on the other hand, are considered "permit holders or applicants for a permit." Therefore, employees of a municipality that owns or operates a facility required to obtain a permit could not sit on the board or body that approves all or portions of

sludge permits issued in an approved State.

Although the NPDES standard for conflict-of-interest is dictated by the CWA and is considered relatively stringent, EPA believes that requirements to guard against conflicts-of-interest are also important for State sludge programs. The Agency solicits comments on whether another standard would be more appropriate. One approach the Agency is considering is allowing a State that will use a program approved under another Federal statute as the basis for its sludge program under Part 501 to comply with the conflict-of-interest provision applicable under the other Federal statute (e.g., section 128 of the Clean Air Act, 42 U.S.C 7248).

Section 501.15(b) is the second principal subsection, and sets forth the permit conditions all State permits would need to contain in order for the program to be approvable. These provisions are important because they put the permittee on notice as to the applicability of Clean Water Act provisions, and identify the effect of the permit with regard to compliance and noncompliance with the Clean Water Act for enforcement purposes.

The first paragraph of § 501.15(b) requires that the permit include requirements necessary to comply with the Part 503 sludge standards and generally the requirement in CWA section 405 to protect public health and the environment. This includes requirements as to sludge quality, monitoring frequency, management practices, etc. Requirements for sludge use and disposal may include management practices or other limitations that apply at the disposal site. When the POTW or other treatment works subject to a permitting requirement disposes of its sludge offsite, the permit must include conditions to meet all applicable requirements, including those that apply at the offsite disposal site, unless those requirements are included in a permit issued under one of the programs listed in section 405(f) of the Act.

The permit by specific language in the permit document would have to require that the permittee comply with all conditions, and that noncompliance with any of the permit conditions constitutes a violation of the Clean Water Act. The permit must require compliance with the Part 503 technical standards, even if the permit has not been modified to incorporate them. This implements the language of CWA section 405 which makes these regulations directly enforceable one year from their promulgation, or two years from promulgation when construction is required. The permit must inform the permittee of the civil and criminal penalties in the Clean Water Act for permit violations and noncompliance with section 405 (which includes penalties for noncompliance with the promulgated technical standards even if the standards have not been incorporated in the permit).

This section also contains several boilerplate permit conditions. The permittee must take all reasonable steps to prevent sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely affecting health or the environment, and must at all times properly operate and maintain facilities and systems. It is not a defense in cases of noncompliance to claim that it would have been necessary to halt or reduce the permitted activity in order to comply.

Paragraph (7) states that the permit may be modified, revoked and reissued, or terminated for cause.

Paragraph (8) is the duty to provide information. This puts the permittee on notice that the Director may request information on compliance, or to determine whether cause exists to modify or terminate the permit, and that the permittee has an obligation to furnish such information within a reasonable time.

Paragraph (9) discusses inspection and entry. It is very important that this be set forth in the permit. It sets the parameters for the Director or an authorized representative to enter onto the premises, inspect the facility, have access to records and conduct sampling.

Paragraph (10) outlines the requirements for monitoring, recordkeeping and record submission. Paragraph (10)(i) would require that the permittee report monitoring data no less frequently than once a year. The permit will require that monitoring be conducted at the frequency specified by the Part 503 standards; however, the permit writer may require additional or more frequent monitoring as needed. Today's proposed rule would not specify a minimum frequency for sludge monitoring (except compliance with Part 503 technical standards), but would leave that determination to the permit writer using best professional judgment and guidance. This approach avoids establishing a minimum monitoring frequency in regulations that may not be appropriate for the broad variety of situations and facilities that would be involved. Frequent monitoring, however, enhances the effectiveness of compliance monitoring and enforcement, particularly for early detection, assessment, and correction of violations. For this purpose, quarterly or even monthly monitoring has been suggested as a minimum requirement for all facilities. On the other hand, the potential threat to public health and the environment from some facilities (e.g. small lagoons that treat only domestic sewage and dispose of sludge infrequently) may be so remote that monitoring less frequently or on an "as needed" basis (e.g., change in influent or disposal practices) is sufficient. Of course, in establishing requirements the Agency will balance the value of such requirements against the burden they would impose on the public. EPA is sensitive to this and will take both factors into account in determining the need for specifying a minimum monitoring frequency and the appropriate level of monitoring. EPA solicits comments on whether the regulations should establish a minimum monitoring frequency and, if so, what that frequency should be (e.g. annual, quarterly, monthly).

Paragraph (10) also requires that monitoring be representative of the monitored activity, and that parameters for monitored information be set forth in the permit. Monitoring must be conducted in accordance with procedures established under 40 CFR Part 503 unless others have been specified in the permit. The permit must inform the permittee that anyone who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method or makes a false statement or representation is subject to Clean Water Act criminal penalties.

Paragraph (11) contains signatory requirements. It incorporates by reference 40 CFR 122.22. This ensures that applications and reports are signed by an authorized individual.

Paragraph (12) would require the permittee to give advance notice to the Director of any planned changes in the sludge disposal practices or facilities that may justify the application of different permit conditions, or which may result in noncompliance with the permit. The permit must also require that the permittee report all instances of noncompliance.

Under Paragraph (12)(ii) the permit would have to provide that it was not transferable except after notice to the Director. Section 501.15(c) discusses procedures for permit transfer.

Today's proposal would require that the permit contain a reopener clause, so that the permit would have to be modified or revoked and reissued where more stringent technical standards than are currently in the permit are promulgated. (See Paragraph 13.) Under the CWA, compliance with the technical

standards is required regardless of existing permit conditions. Thus, permit modification would facilitate compliance by the statutory deadline of one year from promulgation (or two years where construction is required) found in CWA Section 405. This reopener provision would also apply if limits are promulgated for a pollutant not regulated in the permit.

Subsection (c) discusses procedures for permit actions. This covers permit transfers, permit modification, permit termination, and permit issuance.

Paragraph (1) addresses permit transfers, and sets out procedures for automatic transfer, so that permit modification or revocation and reissuance can be avoided in some instances.

Paragraph (2) discusses permit modification and revocation and reissuance. When permits are modified only the provisions subject to the modification are reopened. Permits may be modified only for cause as defined in (2)(ii). For example, the promulgation of new technical sludge standards by EPA would be cause for modifying the permit.

Permit revocation and reissuance is more severe; the entire permit is reopened and subject to revision and the permit reissued for a new term. Revocation and reissuance can only be done in three circumstances: (1) Cause exists for termination but the Director decides to revoke and reissue; (2) cause exists for modification only but the permittee agrees to revocation and reissuance; or (3) the Director has received notice of a proposed permit transfer under § 501.15(b)(15). (A permit may also be modified to reflect a transfer.)

The most severe permit action, termination of the permit, is described in paragraph (3). Permits can be terminated (or permit renewal applications denied) for four reasons: (1) Noncompliance; (2) permittee's failure to disclose all relevant facts; (3) the permitted activity endangers health or the environment and can be adequately regulated only by modifying or terminating the permit; and (4) a change in condition that requires either reduction or elimination of the permitted activity.

Subsection 501.15(d) describes the permit issuance procedures that the State would need the authority to administer. The most important element of this subsection involves the requirement to ensure public participation in the permit issuance process. This section sets forth minimum provisions to ensure adequate public participation. The State may, of course, provide for more extensive public involvement, e.g., by providing lengthier public comment periods, requiring more public hearings, having more extensive public notice, etc.

The State Agency must not commence processing a permit until the applicant has fully satisfied the application requirements discussed in § 501.15(a)(2).

Paragraph 501.15(d)(3) sets forth procedures for permit modification, revocation and reissuance, and termination. Interested persons may petition the Director to take such action by written request, or he may do so on his own initiative, providing that one of the reasons specified in § 501.15(c) exists.

Paragraph (4) discusses draft permits. A draft permit would be prepared where the Director tentatively decides to issue the permit, and whenever the permit is modified, revoked and reissued, or terminated. A draft permit must include all of the conditions required to be in the permit under the provisions of Part 501 (which includes conditions required for compliance with Part 503).

Paragraph (5) discusses fact sheets. Under today's proposal, State programs would have to require that a fact sheet be prepared for permits issued to "Class 1 Sludge Management Facilities." The purpose of the fact sheet is to explain the basis for any permit condition and thus allow meaningful public comments on the draft permit. Accordingly, the fact sheet would set out the significant factual, legal, methodological, and policy questions considered in preparing the draft permit, including a brief description of the facility and the use and disposal practices, and an explanation of how the limits and conditions for sludge use and disposal were derived.

Public notice and comment procedures are the subject of paragraph (6). Under today's proposal, the State program must require that the Director give public notice of the draft permit and if a public hearing has been scheduled. The public notice must identify the name and address of the processing office, the name and address of the applicant, a brief description of the activity described in the permit application (e.g., sludge incineration), and a description of the procedures for submitting comments. The notice must provide for no less than a 30-day comment period during which any interested person may submit written comments and request a public hearing. Where the notice is for a public hearing, the notice must designate the date, time and place of the hearing and specify its nature and purpose.

The State regulations must specify that public comments will be considered before making a final decision; that significant comments will be responded to in writing and made available to the public; and that any provisions in the final permit which differ from the proposed permit will be noted and explained in the written response to comments.

Subsection (e) sets forth optional program provisions. These provisions, which the State is not required to adopt, are currently in the NPDES program and generally make the program less stringent or easier to administer. If the State decides to adopt general permits, permit continuation, or minor modification of permits for sludge, its provisions must be no less stringent than the corresponding Federal provisions identified in subsection (e). Under today's proposal, State-issued general permits would not be subject to review by EPA's Office of Water Enforcement and Permits, as § 123.44(a)(2) provides for NPDES general permits, but would be reviewed by the EPA Region to the same extent as other State-issued sludge permits (i.e., minimally, all permits for Class 1 facilities must be reviewed by the Region). States considering the use of general permits for sludge should so indicate in their program description and Attorney General's Statement, and make sure that State law would allow issuance of general permits.

Section 501.16 Requirements for compliance evaluation programs. This section would require that States have requirements and procedures for compliance monitoring and evaluation; 40 CFR 123.26 is used as the basis for these requirements. Section 405 of the Clean Water Act makes it unlawful for *any person* to use or dispose of sewage sludge except in accordance with the Part 503 standards. Thus it is important that the State's compliance monitoring program cover non-permittees (e.g., disposal sites) as well as permittees.

Section 501.17 Requirements for enforcement authority. Enforcement remedies must be specified in State statutes (and, as noted earlier, enforcement remedies should also be referenced in each permit.) State law must provide for adequate enforcement authority, including the ability to enjoin violations and bring *both* civil and criminal actions for any violations of permits, the permit program, or the sludge use and disposal standards set forth in 40 CFR Part 503. Other sanctions, such as the ability to bring actions for damages, are allowed, but under today's proposal they would be additions to, and not substitutes for, these enforcement remedies.

Under today's proposal, the State would have to be able to seek injunctive relief in two instances. First, the State must be able to immediately restrain any unauthorized activity endangering the public health or the environment. Second, it must have authority to sue to enjoin any threatened or continuing violations without first revoking the permit. State penalty authority must allow the State to seek civil penalties in the amount of at least $5,000 per day of violation, seek criminal fines (for willful or negligent violations) in the amount of at least $10,000 per day of violation, and seek criminal fines for knowingly making false representations or certifications, or knowingly rendering monitoring devices inaccurate, in at least the amount of $5,000 for each instance of violation.

The minimum penalty ceilings in today's proposal are consistent with the current parallel requirements in Part 123 for approved NPDES programs. The Water Quality Act of 1987 significantly increased both civil and criminal penalties required for violations of the CWA. In keeping with past policy that, to be effective substitutes for the federal program, State programs must have penalties generally proportionate to those available under Federal law, EPA is considering raising the minimum penalty ceilings required for State program approval. Therefore, the final promulgation of today's proposal may require higher minimum penalty ceilings for approved State sludge programs under Part 501. EPA would seek parity between Part 501 and Part 123 in this regard.

States cannot provide additional defenses or rights to dischargers where not authorized by Federal law. Thus, a State could not allow a permittee to challenge its permit limits in an enforcement proceeding, and State law that provided such an option would be inconsistent with the Federal requirements. Similarly, a State could not restrict its enforcement by limiting the use of information in an enforcement action.

State programs must allow for public participation in the enforcement process. Section 501.16(d) would allow States to choose between two options. The first option is for State law to provide for intervention as of right in any enforcement action. States choosing this option may not place restrictions on this right. Alternatively, where State laws allow permissive intervention in State civil or administrative actions, the State could agree not to oppose such intervention in any enforcement proceeding. Under this option, the State would also have to agree to investigate and respond to citizen complaints and publish all settlement agreements for a public comment period of at least 30 days.

Section 501.19 Sharing of information. Section 501.19 incorporates 40 CFR 123.41, which requires that the State make available to EPA upon request, any information obtained or used in the administration of a State program.

Section 501.20 Receipt and use of Federal information. Section 501.20 incorporates § 123.42, which addresses the transfer of relevant information collected by EPA to the State agency upon program approval. Under that section, the MOA between the State and the Regional Administrator must provide for: (1) Transfer of all copies of pending permit applications and other relevant information to the State, and (2) procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Regional Administrator which the Regional Administrator has identified as incomplete until the Director receives information sufficient to correct the deficiency.

Section 501.21 Program reporting to EPA. This section contains the requirements for quarterly and annual reports to be submitted to EPA. These reports are important for tracking the State program and evaluating compliance and enforcement.

Section 501.21(a) describes the annual report, which would include an update of the inventory of sludge facilities, and information of substantial non-compliance of Class 1 management facilities. The information on substantial noncompliance would include instances of significant failure to comply with Part 503 standards and permit conditions, failure to complete construction of essential elements of a sludge facility (as provided in a compliance schedule or as otherwise necessary to meet permit and/or Part 503 standards), and failure to provide adequate monitoring or other reports. This paragraph identifies what information shall be provided with regard to such instances of noncompliance, for Class 1 and non-Class 1 sludge facilities.

Section 501.21(b) contains the requirements for quarterly reports. In that report the State would provide a summary of the incidents of substantial non-compliance occurring in the previous quarter by Class 1 facilities.

4. Program Approval, Revision, and Withdrawal

Section 501.31 Review and approval procedures. This section outlines the procedure for State submission and EPA review and approval of a State program. As with NPDES, today's proposal would require that EPA make a determination as to the completeness of the application within 30 days. Today's proposal would require that EPA notify the State of any deficiencies in its submittal.

Once the program is determined to be complete, EPA would publish notice of the submission in the **Federal Register** and in enough of the largest newspapers in the State to attract State-wide attention. In addition, the notice must be mailed to all interested persons and government agencies, as well as to all permit holders and applicants subject to sludge use and disposal requirements. The notice must provide at least a 45-day comment period and provide that a public hearing within the State will be held no less than 30 days after the notice is published. The notice would indicate where and when the State's submission would be accessible to the public and indicate the cost of obtaining a copy. The notice would also delineate the fundamental aspects of the State's proposed program. Finally, the notice would indicate whom an interested person may contact for additional information.

EPA specifically solicits comments on two requirements of this Section: (1) Whether (as proposed) the rule should require that individual notice of the State's application for program approval should be sent to all permit holders and applicants subject to sludge use and disposal requirements, or whether other forms of notice (**Federal Register**, State newspapers, and mailing lists) would be sufficient; and (2) whether (as proposed) a public hearing on EPA's approval of the State program should be mandatory or whether it should be required only when public interest is demonstrated.

The Administrator has 90 days from the date of receipt of the complete program to approve or disapprove of the program. This period may be extended by mutual agreement between the State and EPA. The Regional office will prepare a responsiveness summary identifying the public participation activities conducted, summarizing significant comments and responding to these comments. Notice of approval will be published in the **Federal Register**. If the program is disapproved, the Administrator will notify the State of the reasons for disapproval and what revisions would be necessary to make the program approvable.

Section 501.22 Procedures for revision of State programs. Revision of State programs may be necessary any time the State or federal laws or

programs change. The procedures for program modification are very similar to the original program approval process.

Paragraph (b) would require that where State program revision is necessitated by changes or additions to the regulations governing sewage sludge use and disposal, including changes to this Part, the State would revise its program within one year from promulgation of the applicable regulations, or within two years if an amendment to a State statute is required.

Section 501.23 Criteria for withdrawal of State programs and Section 501.24 Procedures for withdrawal of State programs. These sections incorporate 40 CFR 123.63 and 123.64, the NPDES provisions for program withdrawal. Under these sections, withdrawal can occur voluntarily (where the State decides to transfer all program responsibilities back to EPA) or involuntarily (EPA decides to withdraw approval where the State program no longer complies with the Clean Water Act or regulations). Program withdrawal is considered an extreme remedy but will be invoked where the State is unable or fails to take corrective action to solve State program deficiencies. Grounds for initiating State program withdrawal proceedings include: (1) The State's legal authorities no longer meet CWA requirements; (2) the operation of the State program fails to comply with EPA regulations; (3) the State's enforcement program fails to comply with EPA regulations; or (4) the State program fails to comply with the terms of the Memorandum of Agreement.

5. Indian Tribes

The February 4, 1986 proposed rule provided that EPA and a tribal government could develop, on a case-by-case basis, an appropriate role for the tribal government in carrying out a sludge management program on Indian lands where a State is unable to demonstrate adequate legal authority to administer and enforce its program on the Indian lands. See proposed § 501.19, 51 FR 4463. Subsequently, Congress created a more prominent role for Indian tribes in the management of environmental programs on Indian lands in section 506 of the WQA (codified as section 518 of the CWA). That section provides in part that:

> The Administrator is authorized to treat an Indian tribe as a State for purposes of title II and Sections 104, 106, 303, 305, 308, 309, 314, 319, 401 402, and 404 of this Act to the degree necessary to carry out the objectives of this section, but only if—
>
> (1) the Indian tribe has a governing body carrying out substantial governmental duties and powers;
>
> (2) the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and
>
> (3) the Indian tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this Act and of all applicable regulations.

CWA section 518(e). This section further directs the Administrator to promulgate regulations which specify how Indian tribes will be treated as States for purposes of the Act. Today, EPA proposes, consistent with the intent of section 518, to provide that Indian tribes may be treated as States for purposes of approved State sludge management programs.

Section 518 does not list section 405, EPA's primary authority for establishing approved State sludge management programs. The legislative history is also silent on this point. However, EPA believes that treating Indian tribes as States is nonetheless appropriate here. Indian tribes may be treated as States under Title II (construction grants) and section 303 (water quality standards and implementation plans). Both sections recognize that sludge management is an integral part of wastewater treatment. Section 303(e) in fact, requires States to have a continuing planning process which includes, inter alia, plans for "controls over the disposition of all residual waste from any water treatment processing." Section 303(e)(3)(H). Since Congress intended that Indian tribes be treated as States for purposes of sludge management activities under other provisions of the Act, it is reasonable to conclude that Congress similarly intended that Indian tribes be treated as States for purposes of approved sludge management programs authorized by Section 405.

Providing for the treatment of Indian tribes as States under section 402 of the Act further supports similar treatment under section 405. Section 402 authorizes approval of State NPDES programs. As discussed elsewhere, EPA proposes to allow NPDES States to use their NPDES programs to implement a section 405(f) sludge management program, consistent with Congressional designation of NPDES permits as a primary implementation mechanism for section 405(d) technical requirements. Thus, an Indian tribe that wishes to obtain separate approval of its NPDES program could also seek approval of its sludge management program as part of that NPDES program. It would be illogical and inconsistent not to allow Indian tribes to seek treatment as a State for purposes of an approved sludge management program that is separate from an NPDES program. EPA does not believe that Congress intended such a result. The Agency therefore proposes to provide for treatment of Indian tribes as States for purposes of sludge management programs approved under Part 501.

EPA intends that an Indian tribe which qualifies for treatment as a State would be subject to many of the same program requirements and approval procedures as are States under existing regulations. Accordingly, the definition of "State" in § 501.2 in today's proposed rule includes Indian tribes which are eligible for treatment as a State.

Today's proposal does not include provisions for determining an Indian tribe's eligibility for treatment as a State. EPA does not expect the requirements or procedures for this determination to vary significantly among the various programs under the Clean Water Act. Accordingly, EPA plans to propose a separate rule addressing Indian tribes' eligibility for treatment as States which would apply to various programs under the CWA, including sections 402, 404 and 405.

C. Part 123: State Sludge Management Program Regulations: NPDES

Part 123 establishes the program requirements and approval procedures for States which seek EPA approval to administer an NPDES permit program pursuant to Section 402 of the Act in lieu of the Federal NPDES permit program. All 39 States which currently have EPA-approved NPDES programs govern, at a minimum, the discharge of pollutants to waters of the United States, including the discharge of sewage sludge to waters of the United States (see sections 405 (a) and (c) of the CWA). None of these State programs, however, have been approved by EPA to administer a program which meets the requirements of sections 405 (d) and (f) of the CWA for the safe use and disposal of sewage sludge.

In the 1987 amendments to the Act, Congress authorized the Administrator of EPA to promulgate procedures for the approval of State programs that assure compliance with section 405(d) of the Act and also recognized permits issued pursuant to section 402 as appropriate vehicles for implementing section 405(d) requirements. Section 405(f). To

accommodate both goals, EPA today is proposing to amend Part 123 to allow States to incorporate a sludge management program as part of their approved NPDES programs.

Today's proposed revisions to Part 123 would apply only to those States which choose NPDES as the vehicle for administering an EPA-approved sludge management program in lieu of the federal program. States which choose to implement an approved sludge program through existing solid waste or other programs would follow the procedures in Part 501 (described above), rather than those in Part 123. A proposed revision to § 123.1(c) reflects this intent. For the same reason, EPA is also proposing to revise the introductory paragraph in § 123.25(a), which lists permitting requirements in Parts 122 and 124 applicable to the federal NPDES program which a State must also be able to implement as part of an approved NPDES program. Today's proposed revision clarifies that a State which chooses not to seek approval of a sludge management program as part of its NPDES program does not have to be able to implement the sludge-related revisions to those provisions of Parts 122 and 124 listed in § 123.25(a) which are promulgated after enactment of the 1987 amendments to the CWA. However, States that use their NPDES programs to implement a sludge program would have to be able to implement these revisions.

Although a State may choose to seek approval of its sludge management program under Part 123 or Part 501, the basic requirements under either Part will be the same. Maintaining consistency among State program requirements will help ensure that minimum standards apply nationwide, regardless of which program a State chooses for its sludge management program. The purpose of the program requirements under both parts is to produce programs which adequately ensure compliance with section 405(d) requirements and meet the Congressional goal of approving State programs which are no less stringent than the federal program. See Cong. Rec. H10576 (October 15, 1986). Today's proposed revisions to Part 123 are designed to "fill in the gaps" of existing NPDES requirements by adding requirements which are unique to sludge management programs.

Program Description

To obtain NPDES approval, States must submit a comprehensive description of the program they propose to administer in lieu of the federal program. § 123.22. For States which seek approval of their sludge management program as part of an NPDES program, EPA is proposing to revise § 123.22 to include three additional requirements. First, States would be required to submit an inventory of all POTWs and other treatment works treating domestic sewage, together with a plan for completing and maintaining an inventory of all sewage sludge generators and disposal facilities. Second, a State would be required to identify any program for regulating the disposal of septage and portable toilet pumpings that is handled under a program that is separate from that for sewage sludge. Finally, the program description would be required to describe any bans or prohibitions imposed by State or local authorities on specific sludge management practices. The above discussion of Part 501 explains these provisions in more detail.

The program description also must describe the State's compliance evaluation program. § 123.22(e). Section 123.26 establishes the minimum requirements for State compliance monitoring programs. EPA proposes two revisions to § 123.26(e) for sludge management programs. First, paragraph (e)(1) is proposed to be revised to specify that the inventory of all sources covered by NPDES must include permits which implement section 405(f) of the CWA. In most cases, sludge treatment works which must obtain permits that implement § 405(d) requirements will already be required to obtain NPDES permits because they discharge wastewater to surface waters of the State. However, some sludge treatment works which are subject to the permitting requirement under section 405 may apply their effluent on land or otherwise dispose of their effluent. The proposed revision to paragraph (e)(1) clarifies that these nondischarging treatment works must also be included in the required inventory. The second proposed revision would require annual inspections of all Class 1 sludge management facilities in addition to inspection of all major dischargers. Again, these two categories may overlap in many cases, but not necessarily in all cases.

Memorandum of Agreement

The Memorandum of Agreement (MOA) between the State Director and the Regional Administrator (RA) must describe which classes and categories of permits the RA will review before issuance by the State and those for which the RA will waive review. Section 123.24(d) lists the classes and categories of permits for which review cannot be waived. Today, EPA proposes to add to this list the category of Class I sludge management facilities. As explained above, Class I sludge management facilities are those which require priority attention as determined by the RA and the State Director. Under this proposal, permits issued to these facilities must be submitted to EPA for review and comment, and, where appropriate, objection.

The MOA also must contain provisions specifying reports and information the State is expected to submit to EPA. Section 123.24(b)(3). Program reporting requirements are listed, in part, in § 123.45, which specifies requirements for noncompliance reporting. Today, EPA is proposing to amend § 123.45 by adding a new paragraph (e), which would require a State to submit reports on noncompliance with sludge requirements as specified in § 501.21, i.e., quarterly reports summarizing instances of significant non-compliance and annual reports. Today's proposal also specifies that the sludge noncompliance reports may be combined with the reports currently required under § 123.45.

Incorporating Sludge Management Into Existing NPDES Programs

States which are approved for NPDES already have in place many of the program requirements that will be required of States which seek approval under Part 501. Consequently, NPDES States need only seek modification of their existing programs under § 123.62 if they wish to implement the sludge program through their existing NPDES programs rather than submit entirely new programs. Typically, EPA expects that a program modification to incorporate sludge would require a State to submit an updated program description (including the information about sludge management activities discussed above), addenda to the Attorney General's Statement and, where necessary, revisions to the Memorandum of Agreement. NPDES States would need to demonstrate that legal authority exists to issue NPDES permits for sludge use and disposal where there is no discharge of the sludge to surface waters, and that they have the additional authority to implement the Part 503 technical regulations. Existing State regulatory and statutory provisions regarding inspection, monitoring, reporting and enforcement must be broad enough to include section 405 implementation. In addition, States would be expected to make any revisions to their legal authority necessary to implement "sludge revisions" to Parts 122 and 124

proposed today which are applicable to State programs (as specified in those parts).

D. Revisions to Part 122

1. General

Part 122 establishes the essential requirements for NPDES permits issued pursuant to section 402 of the Act by EPA or an approved State. It establishes the scope of the NPDES permit program, general requirements governing the administration of the program, application requirements, required permit conditions, and permissible causes for modifying or terminating NPDES permits. These regulations specifically address sludge requirements for NPDES permittees only to the extent of providing that sludge may not be discharged to waters of the United States. While the regulations more generally require that NPDES permits contain any conditions required by section 405 of the Act regarding the disposal of sewage sludge from POTWs (§ 122.44(o)), they neither accurately reflect the broadened scope of sludge requirements nor have explicit requirements designed to address the sewage sludge use and disposal practices that are proposed to be regulated in Part 503, e.g., application requirements.

The WQA of 1987 requires that the Part 503 regulations be implemented through permits and designates NPDES permits as the primary implementation mechanism, where the Part 503 regulations are not already implemented through permits issued under other federal programs (Subtitle C of RCRA, Part C of the Safe Drinking Water Act, MPRSA, or the Clean Air Act) or State programs approved pursuant to section 405(f). *See* section 405(f)(1). Accordingly, EPA is proposing to amend Part 122 to establish requirements for including in NPDES permits any terms and conditions necessary to implement the sludge standards in Part 503 as well as any others which may be necessary to fulfill the general mandate in section 405 to protect human health and the environment. These proposed regulations would apply to all NPDES permits for treatment works treating domestic sewage which are issued by EPA and by States which choose to administer an approved sludge management program as part of their NPDES programs. (**Note**: The permit requirements that must be followed by States which choose to administer an approved sludge program independently from an NPDES program are listed separately in Part 501. These requirements are described above in the discussion about Part 501.)

The 1987 amendments also authorize the Administrator to establish procedures and issue permits for sludge use and disposal to any treatment works that treats domestic sewage where the treatment works is not otherwise subject to NPDES and is not subject to sludge requirements that implement section 405 contained in other federal permits or permits issued under an approved State program ("sludge-only" facilities). CWA, section 405(f)(2). A treatment works that land applies its effluent rather than discharging it to surface waters is an example of a treatment works that might fall into the category of "sludge-only" facilities. Here, although the treatment works would not need an NPDES permit for surface water discharges, it may generate sewage sludge subject to regulation under section 405 and thus would require an NPDES permit under today's proposal.

Today, EPA proposes to amend Part 122 to establish it as the mechanism through which EPA will issue "sludge-only" permits. The proposed revisions include expanding the scope of Part 122 to cover sludge-only permits (§ 122.1) and to indicate where the requirements for "sludge-only" permits differ from the requirements applicable to other NPDES permittees (e.g., proposed § 122.21(c)(3), specifying when a sludge-only facility would have to apply; proposed § 122.21(d)(3)(ii), specifying the information a "sludge-only" facility must submit with its application; proposed § 122.44(j), requirement for pretreatment programs when necessary to assure compliance with section 405 requirements). The general requirements applicable to NPDES permittees would also apply to "sludge-only" permittees except where the requirements, by their own terms, apply only to discharges to surface waters.

Permit conditions that implement technical requirements for the use and disposal of sewage sludge may include management practices and other limitations that apply at the disposal site. The technical sludge standards promulgated at 40 CFR Part 503 will contain both sludge pollutant concentration limits, and management practices and factors that apply at the disposal site. Under today's rule, these conditions must be included in the permit issued to the POTW or other treatment works treating domestic sewage (i.e., the generators), unless applicable requirements have been included in a permit issued under one of the federal programs listed in section 405(f) or in a permit or other approved control mechanism under an approved State program.

As noted above, parties who use and dispose of sewage sludge are also liable under the CWA for violations of any technical regulations promulgated pursuant to section 405(d) of the CWA even though they may not be required to obtain a permit because they have not been classified as a POTW or other treatment works treating domestic sewage. Examples of such parties might include regional sewage treatment facilities not connected to a POTW (e.g., regional incinerators and composting facilities), landfill operators, contractors who purchase sludge from the POTW and distribute it to the public, or farmers who land apply sewage sludge.

In some cases, the most effective way to assure compliance with the technical standards may be to issue separate permits to the users or disposers of sludge. Accordingly, EPA is considering adding a provision to the Part 122 permit regulations to specifically provide for issuing permits to users or disposers of sewage sludge to implement technical standards where the permitting authority (EPA or an approved State) determines (either on a case-by-case basis or for a particular class or category of users or disposers) that a permit is necessary to assure compliance with applicable standards. Such permits might be particularly appropriate for parties which contract with the POTW to dispose of the sludge (e.g., regional sludge incinerators, landfills, commercial applicators and composting facilities). In such cases, where the POTW is not the ultimate user/disposer, and where the requirements applying to the disposal site are implemented directly through a permit or other control mechanism issued to the user/disposer, the POTW permit would contain only the requirements applicable to sludge quality, e.g., pollutant concentration limits. EPA solicits comments on the appropriateness of such permitting authority for other users and disposers, and of limiting the POTW permit in such cases to requirements as to sludge quality.

2. Specific Revisions to Part 122

a. *Purpose and Scope.* EPA proposes several revisions to § 122.1 to reflect the expanded scope of the NPDES program to include requirements for sludge use and disposal pursuant to section 405 of the CWA. The new scope of the NPDES program is discussed above. An additional revision worth noting involves section 405(d)(4) of the CWA. That section provides that:

Prior to promulgation of regulations required by [§ 405(a)(2)], the Administrator shall impose conditions in permits issued to publicly owned treatment works under section 402 of this Act, or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.

EPA reads this provision of the Act to authorize the development, on a case-by-case basis, of permit conditions to regulate sludge use and disposal practices whenever necessary to fulfill the purpose of the Act to protect public health and the environment from the adverse effects of sewage sludge. This authority is in addition to the authority to impose conditions in NPDES permits that implement the requirements of Part 503 (the technical standards) and applies whenever a technical standard in Part 503 does not address a particular pollutant or practice which EPA determines is of concern.

Similarly, EPA reads section 405(d)(4) to authorize imposition of sludge requirements in permits issued to non-POTWs (e.g., privately-owned treatment works treating domestic sewage, sludge incinerators unconnected to a facility treating domestic sewage) if necessary to protect public health and the environment prior to the promulgation of applicable Part 503 requirements. In sum, section 405(d)(4) grants EPA broad authority to include sludge requirements in NPDES permits whenever necessary to protect human health and the environment, whether before or after the promulgation of the technical standards in Part 503.

It has been suggested that EPA use the authority granted by section 405(d)(4) to write permit limits on a case-by-case, best professional judgment basis when an applicable Part 503 standard is outdated and therefore is no longer adequate to protect public health and the environment. This would allow EPA to use new information to write limits that implement the statutory standard without waiting until the completion of a new technical rulemaking, which can take several years to develop and finalize. The Agency solicits comments on whether writing case-by-case permit limits in this situation would be appropriate.

b. *Permit as a Shield.* Section 122.5 currently states that, except for standards or prohibitions under section 307(a) of the Act, "compliance with a permit during its term constitutes compliance * * * with sections 301, 302, 306, 307, 318, 403, and 405 of the CWA." This "permit as a shield" provision mirrors section 402(k) of the Act except that CWA section 402(k) does not include section 405 among those sections covered by the permit shield. Section 405 was included in the regulatory permit-as-shield provision because that section (section 405) merely clarified EPA's authority to require NPDES permits and establish effluent limitations for discharges of sewage sludge to surface waters to the same extent as for other pollutant discharges regulated through NPDES permits. See CWA section 405(a)–(b).

When Congress required permits for the implementation of section 405(d) requirements in the 1987 amendments, it did not make corresponding changes to section 402(k) to extend the permit shield to section 405(d) (i.e., the forthcoming Part 503 technical sludge standards). Moreover, Congress amended section 405(e) to provide, "It shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of this section, *except in accordance with such regulations*" (emphasis added). This language strongly suggests that the section 405(d) regulations are independently enforceable and supports the conclusion that Congress did not intend that compliance with sludge permit conditions would operate as a shield against liability for violations of the regulations.

EPA is proposing to revise § 122.5 to clearly indicate that compliance with a permit does not constitute compliance with section 405(d). Similar revisions are being proposed to § 122.41(a) and § 122.44. This means that persons subject to Part 503 requirements (both permittees and nonpermittees) may be liable for violations of those requirements even if the permit does not address the requirements.

EPA does not read the CWA to prohibit limited protection for permittees in all situations. In particular, EPA believes that it would be unfair to subject a permittee to an enforcement action for a violation of section 405 when the permittee was in compliance with permit terms specifically designed to implement the Part 503 standard allegedly violated. Providing protection to the permittee in this case reinforces the integrity of the permitting system and acknowledges the permittee's good faith efforts to comply with the section 405(d) regulations by complying with its permit. Accordingly, EPA is considering ways to protect permittees in this situation against possible enforcement actions for violating section 405(d) regulations.

One approach would be to adopt a limited affirmative defense which a permittee could assert in an enforcement action if it were in compliance with a permit condition developed to implement the Part 503 standard allegedly violated. Consistent with legislative intent, the defense would not be available if the permit did not address the requirement allegedly violated. Similarly, compliance with interim limits developed on a case-by-case basis pursuant to section 405(d)(4) would not qualify for the defense if the parameter or practice in question were subject to a subsequently promulgated requirement in Part 503 that addressed that parameter or practice.

Another approach would be to promulgate a regulation that deems permit conditions which implement particular Part 503 standards to be Part 503 standards. Therefore, compliance with those permit conditions would be compliance with Part 503 and hence, compliance with section 405(d) requirements.

EPA solicits comments on whether it should provide a protection to permittees against enforcement actions for violating section 405(d) where the permittee complies with permit conditions designed to implement applicable Part 503 requirements, and what the most appropriate way to do this would be.

c. *Application requirements.* Section 122.21 establishes application requirements for NPDES permittees. EPA is proposing revisions to this section both for "traditional" NPDES permittees and "sludge-only" permittees.

Currently, § 122.21(a) states that "any person who discharges or proposes to discharge pollutants" has a duty to apply for an NPDES permit. Today's proposal would revise this section to clearly state that "sludge-only permittees" also have a duty to apply for a permit. Today's proposal would also specify when sludge-only permittees would be required to apply: existing facilities within 120 days after promulgation of 40 CFR Part 503 (or earlier if necessary to protect public health and the environment); new facilities that commence operation after promulgation of 40 CFR Part 503, at least 180 days prior to the date proposed for commencing operation.

Today's proposal would also specify the application requirements for both sludge-only permittees and NPDES permittees that are POTWs or other treatment works treating domestic sewage by revising § 122.21(d)(3). This revision would require that these permit

applicants submit the information required under 40 CFR 501.15(a)(2) (also proposed today). These information requirements are described above in the discussion about Part 501. EPA also plans to evaluate whether additional application requirements would be appropriate (for example, to collect data to assess the need for additional Part 503 standards).

d. *General permits.* Under the existing rule (§ 122.28), general permits may be issued to cover a category of discharges within a specified geographic area when all sources: (1) Involve the same or substantially similar type of operations; (2) discharge the same types of wastes; (3) require the same effluent limitation or operating conditions; (4) require the same or similar monitoring; and (5) in the opinion of the Director, are more appropriately controlled under a general permit than under individual permits. Clearly, under the circumstances described in § 122.28, general permits have the potential to significantly reduce the administrative burden of issuing individual permits without sacrificing environmental quality.

EPA today is proposing to amend § 122.28 so that general permits may be written to cover sludge use or disposal practices under the same type of circumstances as permits for effluent discharges. Under the proposal, for example, a general permit might be written to cover all facilities that use the same disposal method and are subject to the same sludge quality requirements and management practices. It would not be necessary that all facilities covered by the sludge general permit also qualify for a general permit covering their effluent discharges. Thus, it would be possible for a facility to be covered by an individual NPDES permit which regulates its discharges and by a general permit which regulates its sludge practices.

e. *Permit conditions.* Section 122.41 establishes "boilerplate" conditions which must be included in all NPDES permits while § 122.44 establishes requirements for developing individual limits for each permit. Today's proposal includes revisions to both of these sections to accommodate the need to include sludge-related conditions in permits.

Three of the revisions relate to the "permit as a shield" issue discussed above. First, § 122.41(a)(1) would be revised to state that the permittee has a duty to comply with standards promulgated pursuant to section 405(d) (i.e., Part 503) whether or not the permit has been modified to incorporate the standard. As explained earlier, this provision follows the clear intent of Congress. Requiring inclusion of this provision in all permits clearly notifies permittees of their potential liabilities under the Act for violations of section 405. In addition, a proposed revision to § 122.44(b) would require the permitting authority to modify the permit when Part 503 standards are promulgated after permit issuance if the standards are more stringent than existing permit limits. Similarly, a proposed revision to § 122.44(c) would require the permitting authority to include in permits a "reopener" clause, stating that the permit will be reopened to incorporate new section 405 standards under the circumstances described in § 122.44(b). All these revisions parallel existing requirements that apply to section 307(a) toxic effluent standards or prohibitions.

Another group of revisions to § 122.41 and § 122.44 relate to permittee monitoring requirements. Current regulations generally require that all monitoring be conducted in accordance with Part 136. Part 136 methods do not comprehensively address sludge monitoring and analysis. To supplement Part 136, Part 503 may specify required monitoring methodologies where Part 136 methods are inappropriate. Accordingly, EPA proposes to revise § 122.41(j)(4) and (l)(4)(ii) and § 122.44(i)(1)(iii) to state that sludge monitoring methodologies shall be as specified in Part 503, as well as Part 136.

In addition, current regulations require that permits contain requirements for permittee reports on monitoring results at a "frequency dependent on the nature and effect of the discharge, but in no case less than once a year." § 122.44 (i)(2). EPA proposes to revise this section to include reporting for sludge monitoring. Thus, the frequency for reporting of sludge monitoring results which must be specified in the permit would be based on the nature and effect of the permittee's sludge use or disposal activity. How frequently reporting is appropriate would be determined by the permit writer's best professional judgment, but must be required no less than once a year. (Note: Part 503 may also specify recommended or required monitoring frequencies for various parameters and practices. The Agency expects that Part 503 be followed whenever applicable).

As explained in the discussion about proposed Part 501 permit requirements, the Agency is soliciting comments on whether the regulations should establish a minimum monitoring frequency (where there is no applicable Part 503 technical requirement) and what that frequency should be (e.g., annual, quarterly, monthly).

Today's proposed revisions also address how monitoring must be reported. Section 122.41(l)(4) states that monitoring results must be reported on a "DMR." A DMR ("Discharge Monitoring Report") is the EPA uniform national form for the reporting of self-monitoring results by permittees, which must be used by approved NPDES States as well as EPA. At this time, EPA has not yet developed a uniform reporting form for the results of permittee monitoring of sludge activities regulated by permit. Accordingly, EPA proposes to revise § 122.41(l)(4)(i) and (ii) to state that monitoring of sludge use and disposal practices should be reported on forms specified by the Director (rather than on the DMR). EPA intends that the Director (EPA or an approved State) will develop forms to elicit the relevant data from the permittee based on the monitoring and other conditions in the permit. Alternatively, the Director could specify other appropriate forms for reporting monitoring information, such as the forms used by the laboratory to report results of its analyses.

Minor wording revisions are also being proposed today to establish that the activity or requirement addressed by Part 122 regulations includes sludge use and disposal activities as well as effluent discharge activities (e.g., § 122.41(d), "duty to mitigate"; § 122.64(a)(4), termination of permit when permittee ceases regulated activity; see also proposed revisions to § 123.44, EPA review of and objection to State permits). EPA also intends that other general provisions governing permit conditions which are not affected by today's proposed revisions apply to a permittee's sludge activities as well as to discharge activities covered by the permit where the existing language is broad enough to cover both discharge and sludge disposal activities (e.g., "need to halt or reduce activity not a defense" under § 122.41(c); "duty to provide information" under § 122.41(h); "inspection and entry" under § 122.41(i)).

Conversely, existing provisions which, by their own terms, are limited to effluent discharges and are not proposed to be revised today will continue to apply exclusively to the permittee's discharge activities (e.g., bypass and upset defenses (§ 122.41(m), (n)); new sources and new discharges (§ 122.29)). Minor revisions have also been made to some provisions that are clearly intended to apply only to discharge activities, but which, by their language, could be interpreted more broadly (e.g., § 122.44(e)(1), reissued permits; § 122.45(b)(1), production-based limits)

to clarify that these provisions apply to discharge activities only.

f. *Permit modifications.* Under NPDES, permits may be modified or revoked and reissued only for cause. Section 122.62 lists the causes for which permit modification or revocation and reissuance is deemed permissible. Today, EPA proposes two revisions to this section related to sludge. First, § 122.62 (a)(1) is proposed to be revised to clarify that a permit may be modified (or revoked and reissued if the permittee agrees) when there is change in the permittee's sludge use or disposal practice after permit issuance which would justify the application of different or additional limits. This proposed revision directly relates to a corresponding proposal to require a permittee to notify the Director of any significant change in sludge use or disposal practices under § 122.41(1)(1)(iii). Both proposed revisions are intended to cover situations where the permittee decides to switch to a different sludge use or disposal practice than the one(s) described in the permit application and covered by the permit. It would not cover situations where the permittee alternates sludge practices (e.g., depending on the season) and the permit addresses each alternative.

The second revision would allow permit modification whenever required by a reopener clause to incorporate limits based on new standards for sludge use and disposal promulgated in 40 CFR Part 503. (In related revisions proposed today, permits must be modified when the new standards are more stringent than existing permit limits (§ 122.44(b) and the permit must contain a "reopener" clause to this effect (§ 122.44(c)(4)). As noted in earlier discussions, a permittee would be expected to comply with any applicable Part 503 standard by the statutory deadline even if its permit had not been revised to incorporate the standard. However, the proposed revision would give the permittee a basis for requesting modification of the permit to eliminate uncertainty about how the standard applies to the permittee's particular situation, when this is not readily apparent on the face of the regulation. Obtaining specific limits implementing a Part 503 requirement would have added importance if EPA decides to adopt a provision protecting a permittee from enforcement actions for complying with such limits.

E. Revisions to Part 124

Part 124 establishes the procedural requirements for issuing, modifying, and terminating permits under several federal programs, including NPDES. In today's action, EPA proposes to have the procedural requirements in Part 124 that apply to NPDES permits apply as well to "sludge-only" permits which would be issued by EPA under the proposed revisions to Part 122. Thus, § 124.1 is proposed to be revised to state that Part 124 governs "sludge only" permits issued by EPA. Similarly, § 124.71 (applicability of Subpart E governing evidentiary hearings) and § 124.111 (applicability of Subpart F governing non-adversary panel proceedings) are proposed to be revised to indicate that those subparts govern permits issued pursuant to section 405(f)(2) ("sludge only" permits). EPA intends these proposed revisions, together with the proposed revisions to Part 122 described above, to fulfill its statutory responsibility to establish procedures for EPA issuance of permits with sludge use and disposal requirements to treatment works which are not regulated under one of the permit programs listed in section 405(f) of the CWA.

In addition, EPA is proposing to make minor revisions to Part 124 which reflect the expanded content of NPDES permits to include requirements for sludge use and disposal. These proposed changes include: (1) Revisions to the definitions of "applicable standards and limitations", "facility or activity" and "general permit", and a new definition for "Class I sludge management facility;" (2) revision to § 124.6(d)(4) to require that draft permits include conditions necessary to meet the requirements of standards for sludge use and disposal; (3) revisions to §§ 124.8 and 124.56 to require that fact sheets be prepared for "Class I sludge management facilities" (§ 124.8) and contain an explanation of how sludge limits were derived and where the regulated activities or facilities are located (§ 124.56); (4) revisions to the public notice requirements in § 124.10 to require the permit authority to mail the public notice of a permit action to any agency known to have or be required to issue a sludge management permit or ocean dumping permit (§ 124.10(c)(1)(ii)) and to describe in the public notice the location of each sludge management facility (including disposal sites) and disposal or use practice (§ 124.10(d)(1)(vii) and (5) a revision to § 124.5(d) which would allow EPA to terminate a permit in the course of transferring permit responsibility to an approved State under § 501.14(b)(1) without having to issue a notice of intent to terminate (and following the procedures applicable to draft permits).

V. Request for Comments

The proposed rule is intended to provide a comprehensive programmatic framework for implementing the national sludge program mandated by the 1987 amendments to the CWA. In addition to the issues specifically raised in the preamble discussion, EPA requests comments on all aspects of today's proposed rule.

In the State program portion of today's rule, EPA has attempted to develop requirements that could be applied nationwide to assure minimum consistency among State programs and effective implementation of sludge standards through permits as envisioned by Congress in the 1987 CWA amendments. EPA is aware that States have already developed a variety of ways to implement sludge management programs. Therefore, EPA is particularly interested in hearing from States about their experiences in administering sludge management programs and in what specific areas additional flexibility is needed in the final State program rule.

Over 60 persons submitted comments in response to the February 4, 1986, proposed rules for state sludge management programs. Where still relevant (e.g., not rendered moot by the 1987 amendments to section 405 of the CWA), EPA will consider and respond to these comments, together with those received in response to today's proposal, in promulgating the final rules. Therefore, persons who commented on the earlier proposal need not resubmit their comments unless, of course, they wish to change them.

VI. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and, therefore, subject to the requirement of a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in the costs or prices for consumer, individual industries, Federal, State, and local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Today's proposed rule establishes the mechanism (permits) for implementing standards for sludge use and disposal which are being promulgated under a separate rulemaking (to be codified at 40 CFR Part 503). The potential impacts of

these Part 503 standards on regulated parties and the need for a Regulatory Impact Statement will be considered in conjunction with that rulemaking.

The proposed rule also establishes requirements for the submission and approval of State sludge management programs. States are not required to seek program approval under these rules. In any event, the proposed rules would not impose large costs upon State regulatory agencies. Therefore, the proposed rule does not satisfy any of the criteria for a major rule as specified in section 1(b) of the Executive Order and as such does not constitute a major rulemaking. This regulation was submitted to the Office of Management and Budget (OMB) for review.

VII. Paperwork Reduction Act

The information collection requirements (ICRs) in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document (ICR #1237) has been prepared by EPA and a copy may be obtained from Eric Strassler, Information Management Branch, EPA, 401 M Street SW. (PM-223), Washington, DC 20460, or by calling (202) 382-2709. Submit comments on the information collection requirements to EPA and to Timothy Hunt, Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503. The ICR document discusses reporting requirements imposed by the proposed rule and estimates the annual burden to respondents (POTWs, other treatment works treating domestic sewage, and States seeking EPA approval of their sludge management programs) for complying with these requirements. The final rule will respond to any OMB or public comments on the information collection requirements.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of its rules on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's proposed rule most directly affects State agencies. It also affects treatment works that generate and dispose of sewage sludge, by specifying that any applicable requirements promulgated under separate regulations be implemented through requirements in permits issued to the treatment works. In nearly all cases, these treatment works already are required to obtain the permits under existing federal or State programs. Accordingly, I hereby certify pursuant to 5 U.S.C. 605(b) that this amendment will not have a significant impact on a substantial number of small entities.

Lists of Subjects

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control.

40 CFR Part 123

Confidential business information, Hazardous materials, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control, Penalties.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Sewage disposal, Waste treatment and disposal, Water pollution control, Water supply, Indians—lands.

40 CFR Part 501

Confidential business information, Environmental protection, Reporting and recordkeeping requirements, Publicly owned treatment works, Sewage disposal, Waste treatment and disposal.

Date: February 25, 1988.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, 40 CFR Parts 122, 123, 124, and Chapter I of Title 40 of the Code of Federal Regulations are proposed to be amended as follows.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.1 is proposed to be amended by revising paragraphs (a)(1), (d)(2), by adding new paragraphs (b)(3), (g)(5) and (g)(6) and redesignating existing paragraph (g)(5) as (g)(7) and revising it, and by redesignating the remaining paragraphs accordingly, to read as follows:

§ 122.1 Purpose and scope.

(a) * * *

(1) These regulations contain provisions for the *National Pollutant Discharge Elimination System* (NPDES) Program under section 318, 402, and 405 under The *Clean Water Act* (CWA) (Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, and Pub. L. 100-4; 33 U.S.C. 1251 *et seq.*)

* * * * *

(b) * * *

* * * * *

(3) The permit program established under this part also applies to the use and disposal of sewage sludge by owners or operators of any treatment works that treats domestic sewage, whether or not the treatment works is otherwise required to obtain an NPDES permit in accordance with paragraph (a)(1) of this section, unless all requirements implementing section 405(d) of CWA applicable to the treatment works are included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act, Part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator as adequate to assure compliance with section 405 of the CWA.

* * * * *

(d) * * *

* * * * *

(2) *Technical regulations.* The NPDES permit program has separate additional regulations. These separate regulations are used by permit-issuing authorities to determine what requirements must be placed in permits if they are issued. These separate regulations are located at 40 CFR Parts 125, 129, 133, 136, 40 CFR Subchapter N (Parts 400-460), and 40 CFR Part 503.

* * * * *

(g) * * *

* * * * *

(5) Section 405(d)(4) of the CWA requires the Administrator, prior to promulgation of standards for sewage sludge use and disposal, to "impose conditions in permits issued to publicly owned treatment works under section 402 of this Act, or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge."

(6) Section 405(f) provides that NPDES permits must include requirements implementing the standards for sludge use and disposal (40 CFR Part 503) "unless such requirements have been

included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act, Part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator * * *." Section 405(f) also authorizes the Administrator to issue permits with requirements for sludge use or disposal that assure compliance with 40 CFR Part 503 to any treatment works not subject to NPDES (i.e., have no point source discharge) and not covered by the other listed permit programs.

(7) Sections 402 (b) and (c), and 405 (c) and (f) of CWA authorize EPA approval of State permit programs for discharge from point sources, discharges to aquaculture projects, and disposal and use of sewage sludge.

* * * * *

3. Section 122.2 is proposed to be amended by revising the definitions of "applicable standards and limitations", "sewage sludge," "toxic pollutant," by adding a sentence to the definition of "facility or activity" and by adding definitions for "class I sludge management facilities," "standards for sewage sludge use and disposal," "distributor," "generator," "sludge use or disposal practice," "treatment works," and "user," as follows:

§ 122.2 Definitions.

* * * * *

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a "discharge," a "sewage sludge use or disposal practice," or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," pretreatment standards, and "standards for sewage sludge use or disposal" under sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

* * * * *

Class 1 sludge management facilities means any sludge facility classified as such by the Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director.

* * * * *

Distributor means the person responsible for distributing and marketing sewage sludge and sludge-derived products.

* * * * *

Facility or activity * * *. "Facility" also means all land and structures, other appurtenances and improvements on the land used for the treatment, storage, processing, utilization, or disposal of sewage sludge.

* * * * *

Generator means the owner or operator of a treatment works that treats domestic sewage (but not including individual household septic tanks or portable toilets) or any person whose act or process produces sewage sludge.

* * * * *

Sewage Sludge means any solids, semi-solid, or liquid residue which contains materials removed from municipal or domestic wastewater during treatment, including primary and secondary solids, septage, and portable toilet pumpings. "Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic waste treatment system when the system is cleaned.

* * * * *

Sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

* * * * *

Sludge-only facility means any treatment works that treats domestic sewage and engages in "sludge use or disposal practices" subject to regulations promulgated pursuant to section 405(d) of the CWA, and is required to obtain a permit under § 122.1(b)(3) of this part.

Standards for sewage sludge use and disposal means the regulations promulgated at 40 CFR Part 503 pursuant to section 405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage use and disposal practices by treatment works treating domestic sewage and also by the users of sewage sludge.

* * * * *

Toxic Pollutant means any pollutant listed as toxic under section 307(a)(1) or, in the case of "sludge use or disposal practices," any pollutant listed as toxic in regulations implementing section 405(d) of the CWA.

Treatment works means any devices and systems used in the collection, storage, treatment, recycling, and reclamation of domestic sewage waste of a liquid nature, including land dedicated for the storage, treatment and disposal of sewage and resulting sludge.

User means the person responsible for proper end use of sewage sludge or sludge products.

* * * * *

4. Section 122.5 is proposed to be amended by revising paragraph (a) to read as follows:

§ 122.5 Effect of a permit.

(a) *Applicable to State programs § 123.25.* Except for any toxic effluent standards and prohibitions imposed under section 307 of the CWA and standards for sludge use and disposal under 405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with sections 301, 302, 306, 307, 318, 403, and 405(a)–(b) of CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 122.62 and 122.64.

* * * * *

5. Section 122.21 is proposed to be amended by revising paragraph (a), by redesignating (c) as (c)(1) and adding a new paragraph (c)(2), by redesignating paragraph (d)(3) as (d)(3)(i), and revising it and adding a new paragraph (d)(3)(ii) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

(a) *Duty to apply.* Any person who discharges or proposes to discharge pollutants or who owns or operates a "sludge-only facility" and who does not have an effective permit, except persons covered by general permits under § 122.28, excluded under § 122.3, or a user of a privately owned treatment works unless the Director requires otherwise under § 122.44(m), shall submit a complete application (which shall include a BMP program if necessary under 40 CFR 125.102) to the Director in accordance with this section and Part 124.

* * * * *

(c) * * *

(2) Any existing "sludge-only facility" shall submit an application to the Director within 120 days after promulgation of 40 CFR Part 503 or upon request of the Director prior to the promulgation of 40 CFR Part 503 if the Director determines that a permit is necessary to protect public health and the environment from any adverse effects that may occur from toxic pollutants in sewage sludge. Any "sludge-only facility" that commences operations after promulgation of 40 CFR Part 503 shall submit an application to the Director at least 180 days prior to the date proposed for commencing operations.

* * * * *

(d) * * *

(3)(i) All applicants for EPA-issued permits, other than POTWs, new sources, and "sludge-only facilities," must complete Forms 1 and either 2b or 2c of the consolidated permit application forms to apply under § 122.21 and paragraphs (f), (g), and (h) of this section.

(ii) In addition to any other applicable requirements in this part, all POTWs and other treatment works treating domestic sewage, including "sludge-only facilities," must submit with their applications the information listed at 40 CFR 501.15(a)(2).

* * * * *

6. Section 122.28 is proposed to be amended by revising the introductory text of paragraphs (a)(1) and (a)(2)(ii) and by revising paragraphs (a)(2)(ii) (B), and (C) and paragraphs (b)(2)(i) (B), (C), and (F) to read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

(a) * * *

(1) *Area.* The general permit shall be written to cover a category of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (a)(2)(ii) of this section, except those covered by individual permits, within a geographic area. * * *

* * * * *

(2) *Sources.* * * *

(ii) A category of point sources other than storm water point sources, or a category of sludge facilities, if the sources or facilities all:

(A) * * *

(B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

(C) Require the same effluent limitations, operating conditions, or standards for sludge use and disposal;

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) * * *

(B) The discharge or sludge facility is not in compliance with the conditions of the general NPDES permit;

(C) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or sludge facility;

* * * * *

(F) Standards for sludge use and disposal have been promulgated for the sludge use and disposal practice covered by the general NPDES permit; or

* * * * *

7. Section 122.41 is proposed to be amended by revising paragraphs (a)(1), (d), (j)(4), by adding a new paragraph (l)(1)(iii), and by revising paragraphs (l)(4)(i) and (l)(4)(ii), to read as follows:

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).

* * * * *

(a) * * *

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sludge use and disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

* * * * *

(d) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

* * * * *

(j) * * *

(4) Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, unless other test procedures have been specified in the permit.

* * * * *

(l) * * *

(1) * * *

(iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit;

* * * * *

(4) * * *

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.

(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

* * * * *

8. Section 122.44 is proposed to be amended by redesignating paragraph (b) as paragraph (b)(1) and adding a new paragraph (b)(2), by adding a new paragraph (c)(4), by revising paragraphs (i)(1)(iii) and (i)(2), by adding a new paragraph (j)(3), and by revising paragraph (l)(1) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(2) *Standards for sewage sludge use and disposal* under section 405(d) of the CWA unless those standards have been included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act, Part C of Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator. When there are no applicable standards for sewage sludge use or disposal, the permit shall include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use and disposal is promulgated under section 405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Director shall initiate proceedings under these regulations to modify or revoke and reissue the permit to conform to the standard for sewage sludge use and disposal.

(c) * * *

(4) For any permit issued to a treatment works which treats domestic sewage (including "sludge-only facilities"), the Director shall include a reopener clause to incorporate any applicable standard for sludge use or disposal promulgated under section 405(d) of the CWA. The Director shall promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

* * * * *

(i) * * *

(1) * * *

(iii) Other measurements as appropriate including pollutants in

internal waste streams under § 122.45(i); pollutants in intake water for net limitations under § 122.45(f); frequency, rate of discharge, etc., for noncontinuous discharges under § 122.45(e); pollutants subject to notification requirements under § 122.42(a); and pollutants in sewage sludge or other monitoring (e.g., air emissions, groundwater monitoring) as specified in 40 CFR Part 503;

* * * * *

(2) Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge or the sludge use or disposal practice, but in no case less than once a year.

* * * * *

(j) * * *

(3) For POTWs which are "sludge-only facilities," a requirement to develop a pretreatment program under 40 CFR Part 403 when the Director determines that a pretreatment program is necessary to assure compliance with section 405(d) of the CWA.

* * * * *

(l) *Reissued permits.* (1) Except as provided in paragraph (l)(2) of this section when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the provisions in the previous permit (unless the circumstances on which the previous permit were based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.62.)

* * * * *

9. Section 122.45 is proposed to be amended by revising paragraph (b)(1) to read as follows:

§ 122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) *Production-based limitations.* (1) In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.

* * * * *

10. Section 122.47 is proposed to be amended by revising paragraph (a)(3)(i) to read as follows:

§ 122.47 Schedules of compliance.

(a) * * *

(3) * * *

(i) The time between interim dates shall not exceed 1 year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.

* * * * *

11. Section 122.62 is proposed to be amended by revising paragraphs (a)(1) and (a)(7) to read as follows:

§ 122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).

* * * * *

(a) * * *

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

* * * * *

(7) *Reopener.* When required by the "reopener" conditions in a permit, which are established in the permit under § 122.44(b) (for CWA toxic effluent limitations and standards for sludge use and disposal, see also § 122.44 (c)) or 40 CFR 403.10 (e) (pretreatment program).

* * * * *

12. Section 122.64 is proposed to be amended by revising paragraph (a)(4) to read as follows:

§ 122.64 Termination of permits (applicable to State programs, see § 123.25).

(a) * * *

(4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

13. The authority citation for Part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

14. Section 123.1 is proposed to be amended by revising paragraphs (b) and (c) as follows:

§ 123.1 Purpose and scope.

* * * * *

(b) These regulations are promulgated under the authority of sections 101(e), 304(i), and 405(f) of CWA, and implement the requirements of those sections.

(c) The Administrator shall approve State programs which conform to the applicable requirements of this part. A State NPDES program will not be approved by the Administrator under section 402 of CWA unless it has authority to control the discharges specified in sections 318 and 405(a) of CWA. Permit programs under sections 318 and 405(a) will not be approved independent of a section 402 program. (Permit programs under section 405(f) of CWA (sludge management programs) may be approved independently of a section 402 permit program under 40 CFR Part 501.)

* * * * *

15. Section 123.2 of proposed to be revised to read as follows:

§ 123.2 Definitions.

The definitions in Part 122 and Part 501 apply to all subparts of this part.

16. Section 123.22 is proposed to be amended by adding a new paragraph (f) to read as follows:

§ 123.22 Program description.

* * * * *

(f) A State seeking approval of a sludge management program under section 405(f) of the CWA as part of its NPDES program in addition to the above requirements of this section, shall include the following:

(1) An inventory of all POTWs and other treatment works treating domestic sewage and a plan for developing and maintaining in inventory of all sewage sludge generators and disposal facilities in the State;

(2) An identification of any State program for regulating the disposal of septage and portable toilet pumpings if separate from the State's program for sewage sludge; and

(3) If applicable, a description of any bans or prohibitions imposed by State or local authorities on specific sewage sludge management practices.

17. Section 123.24 is proposed to be amended by revising the last sentence in the introductory text of paragraph (d), and by adding paragraph (d)(8) to read as follows:

§ 123.24 Memorandum of Agreement with the Regional Administrator.

* * * * *

(d) * * * While the Regional Administrator and the State may agree to waive EPA review of certain "classes or categories" of permits, no waiver of review may be granted for the following classes or categories:

* * * * *

(8) Facilities which are "Class I Sludge Management Facilities" as defined in 40 CFR 501.2.

* * * * *

18. Section 123.25 is proposed to be amended by revising the introductory

text of paragraph (a) and by revising paragraph (a)(37) to read as follows:

§ 123.25 Requirements for permitting.

(a) All State Programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each, except that a State which chooses not to administer a sludge management program pursuant to section 405(f) of the CWA as part of its NPDES program is not required to have legal authority to implement the portions of the following provisions which were promulgated after the enactment of the Water Quality Act of 1987 (Pub. L. 100–4) and which govern sewage sludge use and disposal. In all cases, States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

* * * * *

(37) 40 CFR Parts 129, 133, Subchapter N and 40 CFR Part 503.

* * * * *

19. Section 123.26 is proposed to be amended by revising paragraphs (e) (1) and (5) to read as follows:

§ 123.26 Requirements for compliance evaluation programs.

* * * * *

(e) * * *

(1) Maintaining a comprehensive inventory of all sources covered by NPDES permits (including permits which implement section 405 of CWA where applicable) and a schedule of reports required to be submitted by permittees to the State agency.

* * * * *

(5) Inspecting the facilities of all major dischargers and all Class I sludge management facilities where applicable at least annually.

20. Section 123.44 is proposed to be amended by revising paragraphs (c)(5) and (c)(6) to read as follows:

§ 123.44 EPA review of and objections to State permits.

* * * * *

(c) * * *

(5) Any provisions of the proposed permit relating to the maintenance of records, reporting, monitoring, sampling, or the provision of any other information by the permittee are inadequate, in the judgment of the Regional Administrator, to assure compliance with permit conditions, including effluent standards and limitations or standards for sewage sludge use and disposal required by CWA, by the guidelines and regulations issued under CWA, or by the proposed permit;

(6) In the case of any proposed permit with respect to which applicable effluent standards and limitations or standards for sewage sludge use and disposal under sections 301, 302, 306, 307, 318, 403, and 405 of CWA have not yet been promulgated by the Agency, the proposed permit, in the judgment of the Regional Administrator, fails to carry out the provisions of CWA or of any regulations issued under CWA; the provisions of this paragraph apply to determinations made pursuant to § 125.3(c)(2) in the absence of applicable guidelines, to best management practices under section 304(e) of CWA, which must be incorporated into permits as requirements under sections 301, 306, 307, 318, 403 or 405, and to sewage sludge use and disposal requirements developed on a case-by-case basis pursuasnt to section 405(d) of CWA, as the case may be;

* * * * *

21. Section 123.45 is proposed to be amended by adding a new paragraph (e) to read as follows:

§ 123.45 Noncompliance and program reporting by the Director.

* * * * *

(e) *Sludge noncompliance program reports.* The Director shall prepare and submit quarterly noncompliance and annual program reports as required under 40 CFR 501.21. The Director may include this information in reports submitted in accordance with paragraphs (a)–(d) of this section.

PART 124—PROCEDURES FOR DECISIONMAKING

22. The authority citation for Part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

23. Section 124.1 is proposed to be amended by revising the first sentence of paragraph (a) to read as follows:

§ 124.1 Purpose and scope.

(a) This part contains EPA procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA, UIC, PSD and NPDES "permits" (including "sludge-only" permits issued pursuant to § 122.1(b)(3)), other than RCRA and UIC "emergency permits" (see §§ 270.61 and 144.34) and RCRA "permits by rule" (§ 270.60).* * *

* * * * *

24. Section 124.2 is proposed to be amended by revising paragraph (a), and by revising the definitions of "applicable standards and limitations," "Facility or activity," and the first sentence of "General permit" to read as follows:

§ 124.2 Definitions.

(a) In addition to the definitions given in §§ 122.2 and 123.2 (NPDES), 501.2 (sludge management), 144.3 and 145.2 (UIC), 233.3 (404), and 270.2 and 271.2 (RCRA), the definitions below apply to this part, except for PSD permits which are governed by the definitions in § 124.41.* * *

* * * * *

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a "discharge", a "sludge use or disposal practice" or a related activity is subject under the CWA, including "standards for sewage sludge use and disposal", effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

* * * * *

Facility or activity means any "HWM facility," UIC "injection well," NPDES "point source" or "treatment works" as defined in § 501.2, or State 404 dredge or fill activity, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

General permit (NPDES and 404) means an NPDES or 404 "permit" authorizing a category of discharges or activities under the CWA within a geographic area.* * *

25. Section 124.3 is proposed to be amended by revising the third and sixth sentences in paragraph (c) to read as follows:

§ 124.3 Application for a permit.

* * * * *

(c) * * * Each application for an EPA-issued permit submitted by an existing HWM facility (both Parts A and B of the application), existing injection well or existing NPDES source or sludge-only permittee should be reviewed for completeness within 60 days of receipt.* * * When the application is for an existing HWM facility, an existing UIC injection well or an existing NPDES source or sludge-only permittee the Regional Administrator shall specify in the notice of deficiency a date for submitting the necessary information.* * *

* * * * *

26. Section 124.6 is proposed to be amended by revising paragraph (d)(4)(v) to read as follows:

§ 124.6 Draft permits.

(d) * * *

(4) * * *

(v) NPDES permits, effluent limitations, standards, prohibitions, standards for sludge use and disposal, and conditions under §§ 122.41, 122.42, and 122.44, including when applicable any conditions certified by a State agency under § 124.55, and all variances that are to be included under § 124.63.

* * * * *

27. Section 124.8 is proposed to be amended by revising the first sentence in paragraph (a) to read as follows:

§ 124.8 Factsheet.

* * * * *

(a) A factsheet shall be prepared for every draft permit for a major HWM, UIC, 404, or NPDES facility or activity, for every Class I sludge management facility, for every 404 and NPDES general permit (§§ 237.37 and 122.28), for every NPDES draft permit that incorporates a variance or requires an explanation under § 124.56(b), and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. * * *

* * * * *

28. Section 124.10 is proposed to be amended by revising paragraphs (c)(1)(ii) and the first sentence in (d)(1)(vii) to read as follows:

§ 124.10 Public notice of permit actions and public comment period.

(c) * * *

(1) * * *

(ii) Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), NPDES, 404, sludge management permit, or ocean dumping permit under the Marine Research Protection and Sanctuaries Act for the same facility or activity (including EPA when the draft permit is prepared by the State);

* * * * *

(d) * * *

(1) * * *

(vii) For NPDES permits only (including "sludge-only permits"), a general description of the location of each existing or proposed discharge point and the name of the receiving water and the location of each sludge management facility and disposal or use practice. For draft general permits, this requirement will be satisfied by a map or description of the permit area. * * *

* * * * *

29. Section 124.56 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 124.56 Factsheets.

* * * * *

(a) Any calculations or other necessary explanation of the derivation of specific effluent limitation and conditions or standards for sludge use and disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sludge use and disposal as required by § 122.44 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

* * * * *

(c) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application; and

* * * * *

30. Section 124.71 is proposed to be amended by revising the first sentence in paragraph (a) to read as follows:

§ 124.71 Applicability.

(a) The regulations in this subpart govern all formal hearings conducted by EPA under CWA sections 402 and 405 (f), except those conducted under Subpart F. * * *

* * * * *

31. Section 124.111 is proposed to be amended by revising the first sentence of paragraph (a)(1)(i) to read as follows:

§ 124.111 Applicability.

(a) * * *

(1) * * *

(i) In any proceedings for the issuance of any NPDES permit under CWA sections 402 and 405(f) which constitute "initial licensing" under the Administrative Procedure Act, when the Regional Administrator elects to apply this subpart and explicitly so states in the public notice of the draft permit under § 124.10 or in a supplemental notice under § 124.14. * * *

* * * * *

31. Chapter I Of Title 40 of the Code of Federal Regulations is proposed to be amended by adding a new Subchapter O consisting of Part 501 to read as follows:

SUBCHAPTER O—SEWAGE SLUDGE

PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

Subpart A—Purpose, Scope, and General Program Requirements

Sec.

Subpart B—Development and Submission of State Programs

Subpart C—Program Approval, Revision and Withdrawal

Authority: The Clean Water Act, 33 U.S.C. 1251 et seq.

Subpart A—Purpose, Scope and General Program Requirements

§ 501.1 Purpose and scope.

(a) These regulations are promulgated under the authority sections 101(e), 303(e), 304(i), 405(f) and 501(a) of the CWA, and implement the requirements of those Sections.

(b) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State sludge management programs under 405(f) that are not part of a State's NPDES program, and the requirements State programs must meet to be approved by the Administrator under section 405 of CWA. Sludge Management Program submissions may be developed and implemented under any existing or new State authority or authorities as long as they meet the requirements of this part. (States seeking approval of their sludge program as part of their NPDES program are to follow the requirements and procedures for program modification set forth in Part 123.)

(c) Any complete State Sludge Management Program submitted for approval under this Part shall have the following as a minimum:

(1) The authority to require compliance with sludge use and disposal requirements issued under section 405(d) of the CWA, including compliance by federal facilities;

(2) A requirement to prohibit sludge use and disposal except in compliance

with a permit issued to a POTW or other treatment works treating domestic sewage that applies and ensures compliance with applicable requirements of 40 CFR Part 503 and section 405 of the Clean Water Act, and procedures for issuance of such permits;

(3) Provisions for regulating the use or disposal of sewage sludge by non-permittees;

(4) The authority to take actions to protect public health and the environment from any adverse effects that may occur from toxic pollutants in sewage sludge; and

(5) The authority to abate violations of the State sludge program, including civil and criminal penalties and other ways and means of enforcement.

(d) In addition, any complete State Sludge Management Program submitted for approval under this part shall have authority to address:

(1) All sewage sludge management practices used in the State, including associated transport and storage, that are practiced or planned to be practiced in the State. Sludge management activities and practices shall include as applicable:

(A) Sludge treatment, processing, and short-term storage practices, including;

(i) Digestion, composting, heat treatment, and drying,

(ii) Lagoons, stockpiles, and other surface impoundments,

(iii) Sludge treatment, processing and transport activities, as may be covered by Federal regulations.

(B) Sludge use and ultimate disposal practices, including;

(i) Land application,

(ii) Landfill,

(iii) Distribution & marketing,

(iv) Incineration,

(v) Ocean disposal, and

(vi) Any other sludge use and disposal practices as may be covered by Federal regulations.

(e) A State may assign portions of its program responsibilities to local agencies, provided that

(1) No assignment is made to a local agency under the jurisdiction of a political subdivision which owns or operates a POTW or other facility that treats or disposes of sewage sludge;

(2) The program description required by § 501.12 of this part identifies any assignment of program responsibilities to the local agency(ies) and includes copies of any documents which affect the assignment and contain agreements between the State agency and the local agency(ies) defining their respective program responsibilities;

(3) The Attorney General's Statement required by § 501.13 of this part states that any assignment of program responsibilities to the local agency(ies) described in the program description is valid under State law and that State and local law do not otherwise prohibit the local agency(ies) from executing the program responsibilities assigned by the State agency;

(4) The Memorandum of Agreement (MOA) required by § 501.14 of this part includes adequate provisions for the State agency's oversight of the program responsibilities assigned to the local agency(ies);

(5) The State agency retains all responsibility for the program reporting required by § 501.21 of this part and for all other activities required by this part or by the MOA related to EPA oversight of the State's approved program; and

(6) The State agency retains full authority and ultimate responsibility for administering all aspects of the State's approved program in accordance with the requirements of this part and the MOA.

(f) The Administrator will approve State programs which conform to the applicable requirements of this part.

(g) Upon approval of a State program, the Administrator will suspend the issuance of Federal permits for those activities subject to the approved State program. After program approval EPA will retain jurisdiction over any permits (including general permits) which it has issued unless arrangements have been made with the State in the Memorandum of Agreement for the State to assume responsibility for these permits. Retention of jurisdiction will include the processing of any permit appeals, modification requests, or variance requests; the conduct of inspections, and the receipt and review of self-monitoring reports. If any permit appeal, modification request, or variance request is not finally resolved when the Federally issued permit expires, EPA may, with the consent of the State, retain jurisdiction until the matter is resolved.

(h) Notwithstanding approval of a State sludge program, EPA has the authority to take enforcement actions for any violations of this part or section 405 of the CWA.

(i) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part.

(j) Nothing in this part precludes a State or political subdivision thereof, or interstate agency, from adopting or enforcing requirements established by State or local law that are more stringent or more extensive than those required in this part or in any other Federal statute or regulation.

(k) Nothing in this part precludes a State from operating a program with a greater scope of coverage than that required under this part. If an approved State program has greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program.

(l) Sections 106 (a) and (d) of the Marine Protection, Research, and Sanctuaries Act (MPRSA), 33 U.S.C. 1416, generally preclude States from regulating or issuing permits for ocean dumping. Nothing in this regulation is intended to confer on the States the authority to engage in the regulation or permitting of ocean dumping in contravention of the provisions of sections 106 (a) and (d) of the MPRSA.

§ 501.2 Definitions.

"Approved program" means a State program which has received EPA approval under this part.

"Class I sludge management facility" means any sludge facility classified as such by the Regional Administrator in conjunction with the State Program Director.

"Disposal practice" means the emitting, discharging, depositing, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land, air, or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Distributor" means the person responsible for distributing and marketing sewage sludge and sludge-derived products.

"Facility" means all land and structures, other appurtenances, and improvements on the land used for the treatment, storage, processing, utilization, or disposal of sewage sludge.

"Generator" means the owner or operator of a treatment works (but not including individual household septic tanks or portable toilets) or any person whose act or process produces sewage sludge.

"Municipality," as defined in section 502(4) of the Clean Water Act, means a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, (or an Indian tribe or an authorized Indian tribal organization,) having jurisdiction over sewage sludge management, or a designated and approved management agency under section 208 of the Clean Water Act. This definition includes a special district created under State law

such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility.

"Permit" means an authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirements of this part.

"Publicly Owned Treatment Works" or "POTW" means a "treatment works" which is owned by a State or municipality.

"Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic waste treatment system when the system is cleaned.

"Sewage sludge" means any solid, semi-solid, or liquid residue which contains materials removed from municipal or domestic wastewater during treatment, including primary and secondary solids, septage, and portable toilet wastes.

"Sludge management practice" means the collection, storage, treatment, transportation, processing, monitoring, use or disposal of sewage sludge.

"State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands. "State" also means an Indian tribe which is eligible for treatment as a State under regulations promulgated under section 518 of the CWA.

"State Program Director" or "Director" means the chief executive officer of the State sewage sludge management agency.

"State sewage sludge management agency" means the agency designated by the Governor as having the lead responsibility for managing or coordinating the approved State program under this part.

"Treatment works" means any devices and systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage waste of a liquid nature, including land dedicated for the storage, treatment and disposal of sewage and resulting sludge.

"Use" or "utilization practice" means the treatment or final disposition of a waste material involving resource recovery, recycling, or beneficial use of all or part of the material for such purposes as energy recovery, and soil fertilization or conditioning.

"User(s)" means the person(s) responsible for proper end use of sewage sludge or sludge products.

§ 501.3 Coordination with other programs.

Issuance of State permits under this part may be coordinated with issuance of RCRA, UIC, NPDES, 404 and other permits whether they are controlled by the State, EPA, or the Corps of Engineers. (See for example 40 CFR 124.4 for procedures for coordinating permit issuance.)

Subpart B—Development and Submission of State Programs

§ 501.11 Elements of a sludge management program submission.

(a) Any State that seeks to administer a program under this part shall submit to the Administrator at least three copies of a program submission. The submission shall contain the following:

(1) A letter from the Governor of the State requesting program approval;

(2) A complete program description, as required by § 501.12 describing how the State intends to carry out its responsibilities under this part;

(3) An Attorney General's statement as required by § 501.13;

(4) A Memorandum of Agreement with the Regional Administrator as required by § 501.14; and

(5) Copies of all applicable State statutes and regulations, including those governing State administrative procedures.

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the 90-day review period will be deemed to have begun on the date of the completeness determination. If EPA finds that a State's submission is incomplete, the review period will not begin until all the necessary information is received by EPA.

(c) If the State's submission is materially changed during the review period, the review period will begin again upon receipt of the revised submission.

(d) The State and EPA may extend the review period by agreement.

§ 501.12 Program description.

Any State that seeks to administer a program under this part shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under any interstate compact. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The reponsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency must be designated as a "lead agency" to facilitate communications between EPA and the State agencies having program responsibility. If the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the federally required portion of the program. This description shall include:

(1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program;

(2) An itemization of the estimated costs of establishing and administering the program including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support; and

(3) An estimate of the available resources for implementing the program.

(c) A description of applicable State procedures, including permitting procedures, and any State administrative or judicial review procedures.

(d) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program.

(e) A complete description of the State's compliance tracking and enforcement program (see 40 CFR 501.16 and 501.17).

(f) An inventory of all POTWs and other treatment works treating domestic sewage who generate, use or dispose of sewage sludge and procedures for developing an inventory of all sewage sludge generators and disposal facilities in the State;

(g) An identification of the State's program for regulating the disposal of septage and portable toilet pumpings if separate from the State's program for sewage sludge; and

(h) If applicable, a desciption of any bans or prohibitions imposed by State or local authorities on specific sewage sludge management practices.

§ 501.13 Attorney General's statement.

(a) Any State that seeks to administer a program under this part shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel) that the laws of the State, or an interstate compact, provide adequate authority to carry out the program described under § 501.12 and to meet the requirements of this part. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program. If a State seeks to carry out the program on Indian lands, the statement shall include an appropriate opinion and analysis of the State's authority.

§ 501.14 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this part shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Program Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's oversight responsibility.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). If existing permits are transferred from EPA to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

(2) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection. EPA shall follow the permit review procedures set forth in 40 CFR 123.44, except that where a State issues a general permit for sludge, the review by the Office of Water Enforcement and Permits provided in § 123.44(a)(2) for NPDES general permits will not apply.

(3) The Memorandum of Agreement shall also specify the extent to which EPA will waive its right to review, object to, or comment upon State-issued permits under section 402(d)(3), (e) or (f) of CWA. While the Regional Administrator and the State may agree to waive EPA review of certain "classes or categories" of permits, no waiver of review may be granted for facilities which are "Class I Sludge Management Facilities" as defined in § 501.2.

(4) Whenever a waiver is granted under paragraph (3) of this section, the Memorandum of Agreement shall contain a statement that the Regional Administrator retains the right to terminate the waiver as to future permit actions, in whole or in part, at any time by sending the State Director written notice of termination.

(5) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate. The procedures shall implement the requirements of § 501.21.

(c) The Memorandum of Agreement shall also provide for the following:

(1) Prompt transmission to the Regional Administrator of notice of every action taken by the State agency related to the consideration of any permit application or general permit, including a copy of each proposed or draft permit and any conditions, requirements, or documents which are related to the proposed or draft permit or which affect the authorization of the proposed permit, except those for which permit review has been waived under paragraph (b)(3) of this section. The State shall supply EPA with copies of notices for which permit review has been waived whenever requested by EPA; and

(2) Transmission to the Regional Administrator of a copy of every permit issued to a Class I Sludge Management Facility. Copies of final permits issued to other sludge management facilities shall be transmitted to the Regional Administrator upon request.

(3) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(4) When appropriate, provisions for joint processing of permits by the State and EPA for facilities or activities which require permits from both EPA and the State under different programs (See for example 40 CFR 124.4).

(5) Provisions for modification of the Memorandum of Agreement in accordance with this part.

(d) The Memorandum of Agreement, the annual program grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this part. The State/EPA Agreement may not override the Memorandum of Agreement.

§ 501.15 Requirements for permitting.

(a) *General requirements.* All State programs under this Part shall have legal authority to implement each of the following provisions and must be administered in conformance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

(1) *Confidentiality of information.* State programs shall deny claims of confidentiality for the following information:

(i) The name and address of any permit applicant or permittee;

(ii) Permit applications, permits, and effluent data. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

(2) *Information requirements.* All applicants for permits shall provide the following information to the Director:

(i) The activities conducted by the applicant which require it to obtain a permit.

(ii) Name, mailing address, and location of the facility for which the application is submitted.

(iii) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(iv) Whether the facility is located on Indian lands.

(v) A listing of all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous Waste Management program under RCRA.

(B) UIC program under SDWA.

(C) NPDES program under CWA.

(D) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(E) Nonattainment program under the Clean Air Act.

(F) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(G) Ocean dumping permits under the Marine Protection, Research, and Sanctuaries Act.

(H) Dredge or fill permits under section 404 of CWA.

(I) Other relevant environmental permits, including State permits.

(vi) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the location of the sludge management facilities (including disposal sites).

(vii) Any sludge monitoring data the applicant may have which is representative of normal operating conditions at the facility, including available ground water monitoring data, with a description of the well locations, for landfills or land application sites (see Appendix 1 to 40 CFR Part 257).

(viii) A description of the applicant's sludge use and disposal practices (including, where applicable, the location of any sites where the applicant transfers sludge for treatment and/or disposal, as well as the name of the applicator or other contractor who land applies sludge if different from the applicant, and the name of any distributors when the sludge will be disposed of through distribution and marketing, if different from the applicant).

(ix) Annual sludge production volume.

(x) Any information required to determine the appropriate standards for permitting under 40 CFR Part 503 and

(xi) Any other information the Program Director may request and reasonably require to assess the sludge use and disposal practices, to determine whether to issue a permit, or to ascertain appropriate permit requirements.

(3) *Recordkeeping.* Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

(4) *Signatories to permit applications and reports* as provided in 40 CFR 122.22.

(5) *Duration of permits.* (i) 405(f) permits shall be effective for a fixed term not to exceed 5 years.

(ii) The term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(iii) The Director may issue any permit for a duration that is less than the full allowable term under this section.

(6) *Schedules of compliance*—(i) *General.* The permit may, when appropriate, specify a schedule of compliance leading to compliance with CWA and regulations. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

(ii) *Interim dates.* If a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the date for their achievement. The time between interim dates shall not exceed six months.

(iii) *Reporting.* The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(6)(ii) of this section is applicable.

(7) *Conflict of interest.* State sludge management programs shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous two years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(i) For the purposes of this paragraph:

(A) "Board or body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal.

(B) "Significant portion of income" means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.

(C) "Permit holders or applicants for a permit" does not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

(D) "Income" includes retirement benefits, consultant fees, and stock dividends.

(E) Income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

(b) *Permit conditions applicable to all permits.* In addition to permit conditions which must be developed on a case-by-case basis in order to meet all requirements of 40 CFR Part 503, section 405 of the CWA, and paragraph (a) (1)-(6) of this section, all permits shall contain the following:

(1) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(2) *Compliance with sludge standards.* The permittee shall comply with standards for sludge and disposal established under section 405(d) of the CWA within the time provided in the regulations that establish such standards, even if the permit has not yet been modified to incorporate the standards.

(3) *CWA penalties.* Section 309 of the Clean Water Act (CWA) sets out penalties applicable to persons who violate the Act's requirements. For example, section 309(d) provides that any person who violates a permit condition implementing section 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed $25,000 per day for each violation. Such violations also may be subject to administrative penalties assessed by the Administrator pursuant to section 309(g) of the CWA. Any person who negligently violates permit conditions implementing section 301.

302, 306, 307, 308, or 405 of the Clean Water Act is subject to a fine not less than $2,500 nor more than $25,000 per day of violation or by imprisonment for not more than 1 year, or both. Any person who knowingly violates a permit condition implementing section 301, 302, 304, 307, 308, or 405 shall be punished by a fine not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years or both.

(4) *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(5) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or prevent sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(6) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures.

(7) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(8) *Duty to provide information.* The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(9) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(i) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(iv) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances, parameters or practices at any location.

(10) *Monitoring and records.* (i) The permittee shall report monitoring results with a frequency dependent on the nature and effect of its sludge use or disposal practices, but in no case less than once a year.

(ii) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. The permittee shall retain records of all monitoring information, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

(iii) Records of monitoring information shall include:

(A) The date, exact place, and time of sampling or measurements;

(B) The individual(s) who performed the sampling or measurements;

(C) The date(s) analyses were performed;

(D) The individual(s) who performed the analyses;

(E) The analytical techniques or methods used; and

(F) The results of such analyses.

(iv) Monitoring must be conducted according to test procedures specified in 40 CFR Part 136 or 503 unless other test procedures have been specified in this permit.

(v) The Clean Water Act provides that any person who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished for the first conviction by a fine of not more than $10,000 or by imprisonment for not more than 2 years per violation, or by both. Subsequent convictions for the same offense are punishable by a fine of not more than $20,000 per day of violation, or imprisonment of not more than 4 years, or both.

(11) *Signatory requirements.* (i) All applications, reports, or information submitted to the Director shall be signed and certified according to the provisions of 40 CFR 122.22.

(ii) The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit shall, upon conviction, be punished for the first conviction by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both. Subsequent convictions shall be punishable by a fine of not more than $20,000 per day of violation or by imprisonment of not more than 4 years, or by both.

(12) *Notice requirements*— (i) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility, or changes planned in the permittee's sludge disposal practice, where such alterations, additions, or changes may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional disposal sites not reported during the permit application process.

(ii) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(iii) *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the CWA.

(iv) *Other noncompliance reporting.* The permittee shall report all instances of noncompliance.

(v) *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

(13) *Reopener.* If an applicable "acceptable management practice" or numerical standard for pollutants in sewage sludge promulgated under section 405(d)(2) of the Clean Water Act as amended by the Water Quality Act of 1987 is more stringent than the sludge pollutant limit or acceptable management practice in this permit, or controls a pollutant not limited in this permit, this permit shall be promptly modified or revoked and reissued to

conform to the requirements promulgated under section 405 (d)(2). The permittee shall comply with the limitations by no later than the compliance deadline specified in the applicable regulations as required by section 405(d)(2)(D) of the Clean Water Act.

(c) *Permit actions.* All State programs under this Part shall have the legal authority to implement the following provisions as a minimum.

(1) *Transfer of permits*—(i) *Transfers by modification.* Except as provided in paragraph (ii) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued to identify the new permittee and incorporate such other requirements as may be necessary under CWA.

(ii) *Automatic transfers.* As an alternative to transfers under paragraph (c)(1)(i) of this section, any sludge permit may be automatically transferred to a new permittee if:

(A) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in paragraph (ii)(B) of this section.

(B) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

(C) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (c)(1)(ii)(B) of this section.

(2) *Modification or revocation and reissuance of permits.* (i) When the Director receives any information (for example, where the Director inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under § 501.15(e)(3)(i), or conducts a review of the permit file), he or she may determine whether or not one or more of the causes listed in paragraphs (c)(2) (ii) and (iii) of this section for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit and may request an updated application if necessary. When a permit is modified, only the conditions subject to a modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. A draft permit must be prepared and other procedures in § 501.15(d) followed. If cause does not exist under this section, the Director shall not modify or revoke and reissue the permit.

(ii) *Causes for modification.* The following are causes of modification but not revocation and reissuance of permits except when the permittee requests or agrees.

(A) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(B) *Information.* The Director has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

(C) *New regulations.* New regulations have been promulgated, or the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued.

(D) *Compliance schedules.* The Director determines good cause exists for modification of a compliance schedule, such as an Act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonable available remedy. However, in no case may a compliance schedule be modified to extend beyond an applicable CWA statutory deadline.

(iii) The following are causes to modify or alternatively, revoke and reissue a permit.

(A) Cause exists for termination under § 501.15(c)(3) and the Director determines that modification or revocation and reissuance is appropriate.

(B) The Director has received notification (as required in the permit, see § 501.15(b)(12)(iii)) of a proposed transfer of the permit.

(3) *Termination of permits.* The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(i) Noncompliance by the permittee with any condition of the permit;

(ii) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(iii) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(iv) A change in any condition that requires either a temporary or a permanent reduction or elimination of any activity controlled by the permit.

(d) *Permit procedures.* All State programs approved under this part shall have the legal authority to implement each of the following provisions and must be administered in accordance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements.

(1) *Application for a permit.* (i) Any person who is required to obtain a permit for the use or disposal of sewage sludge under section 405 of the CWA shall complete, sign and submit to the Director an application for a permit.

(ii) The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.

(2) *Modification, revocation and reissuance, or termination of permits.* (i) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in § 501.15(c). All requests shall be in writing and shall contain factors or reasons supporting the request.

(ii) If the Director tentatively decided to modify or revoke and reissue a permit he or she shall prepare a draft permit incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application. If the Director tentatively decides to terminate a permit he or she shall prepare a Notice of Intent to Terminate and follow the public notice and comment procedures outlined in § 501.15(d)(6).

(3) *Draft permits.* Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application. If the Director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the necessary conditions to implement this part, 40 CFR Part 503, and section 405 of the CWA.

(4) *Fact sheets.* A fact sheet shall be prepared for every draft permit for a Class I Sludge Management Facility, and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

(i) The fact sheet shall include, when applicable:

(A) A brief description of the type of facility or activity which is the subject of the draft permit;

(B) Any calculations or other necessary explanation of the derivation of limitations and conditions for sludge use and disposal, including a citation to the applicable standards under 40 CFR Part 503 and reasons why they are applicable.

(5) *Public notice of permit actions and public comment period.* (i) The Director shall give public notice that the following actions have occurred:

(A) A draft permit has been prepared. The public notice shall allow at least 30 days for public comment.

(B) A hearing has been scheduled. Public notice shall be given at least 30 days before the hearing.

(ii) *Methods.* Public notice of activities described in paragraph (d)(5)(i) of this section shall be given by the following methods:

(A) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

(*1*) The applicant;

(*2*) Any other Agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD, NPDES, MPRSA, or 404 permit for the same facility or activity (including EPA);

(*3*) Any State agency responsible for plan development under CWA section 208(b)(2), 208(b)(4) or 303(e);

(*4*) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and to each State agency having any authority under State law with respect to the construction or operation of such facility; and

(*5*) Any person who requests a copy.

(B) For Class I Sludge Management Facilities permits, publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(C) In a manner constituting legal notice to the public under State law; and

(D) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(iii) *Contents*—(A) *All public notices.* All public notices issued under this part shall contain the following minimum information:

(*1*) Name and address of the office processing the permit action for which notice is being given;

(*2*) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit.

(*3*) A brief description of the activity described in the permit application.

(*4*) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application; and

(*5*) A brief description of the comment procedures required by § 501.15(e)(8) and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.

(*6*) Any additional information considered necessary or proper.

(B) *Public notices for hearings.* In addition to the general public notice described in paragraph (d)(6)(iii)(A) of this section, the public notice of a hearing shall contain the following information:

(1) Reference to the date of previous public notices relating to the permit;

(2) Date, time and place of the hearing; and

(3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(6) *Public comments and requests for public hearings.* During the public comment period, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph (d)(10) of this section.

(7) *Public hearings.* The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit. The Director may also hold a public hearing at his or her discretion, (e.g. where such a hearing might clarify one or more issues involved in the permit decision).

(8) *Response to comments.* At the time a final permit is issued, the Director shall issue a response to comments. The response to comments shall be available to the public, and shall:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing.

(e) *Optional program provisions.* The following provisions may be included in a State program at the State's option. If the State decides to adopt any of these provisions, they must be no less stringent than the corresponding Federal provisions:

(1) Continuation of expiring permits (40 CFR 122.6).

(2) General permits (40 CFR 122.28); and

(3) Minor modifications of permits (40 CFR 122.63).

§ 501.16 Requirements for compliance evaluation programs.

State Sludge management program shall have requirements and procedures for compliance monitoring and evaluation as set forth in § 123.26.

§ 501.17 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment.

Note: This paragraph ((a)(1)) requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit; and

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) Civil penalties shall be recoverable for the violation of any permit condition; any filing requirement; any duty to allow

or carry out inspection, entry or monitoring activities; or any regulation or orders issued by the State Program Director. These penalties shall be assessable in at least the amount of $5,000 a day for each violation.

(ii) Criminal fines shall be recoverable against any person who willfully or negligently violates any applicable standards or limitations; any permit condition; or any filing requirement. These fines shall be assessable in at least the amount of $10,000 a day for each violation.

(iii) Criminal fines shall be recoverable against any person who knowingly makes any false statement, representation or certification in any program form, or in any notice or report required by a permit, or who knowingly renders inaccurate any monitoring device or method required to be maintained by the State Program Director. These fines shall be recoverable in at least the amount of $5,000 for each instance of violation.

Note: States which provide the criminal remedies based on "criminal negligence," gross negligence" or strict liability satisfy the requirement of paragraph (a)(3)(ii) of this section.

(b)(1) The maximum civil penalty or criminal fine (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the appropriate Act;

Note: For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.

(c) A civil penalty assessed, sought, or agreed upon by the State Program Director under paragraph (a)(3) of this section shall be appropriate to the violation.

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraphs (a) (1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in § 123.26(b)(4);

(ii) Not oppose intervention by any citizen in any civil or administrative proceeding when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

§ 501.18 Prohibition.

State permit programs shall provide that no permit shall be issued when the Regional Administrator has objected in writing under § 123.44.

§ 501.19 Sharing of information.

State sludge management programs shall comply with the requirements of § 123.41.

§ 501.20 Receipt and use of Federal information.

State sludge management programs shall comply with § 123.42.

§ 501.21 Program reporting to EPA.

The State Program Director shall prepare quarterly and annual reports as detailed below and shall submit any reports required under this section to the Regional Administrator. These reports shall serve as the main vehicle for the State to report on the status of its sludge management program, update its inventory of sewage sludge generators and sludge disposal facilities, and provide information on substantial incidents of noncompliance. The State Program Director shall submit these reports to the Regional Administrator according to a mutually agreed-upon schedule. The Quarterly Sludge Violation Reports and Annual Reports specified below may be combined with other reports to EPA (e.g., existing NPDES or RCRA reporting systems) where appropriate.

(a) *Quarterly reports.* Quarterly Sludge Violation Reports (QSVRs) shall provide a tabular summary of the incidents of "substantial" noncompliance which occurred in the previous quarter by Class I facilities. The State Program Director and Regional Administrator may choose to include reporting of incidents of substantial noncompliance by additional non-Class I facilities at their discretion.

(1) At a minimum, the following occurrences shall be considered incidents of substantial noncompliance which must be reported under this section:

(i) Significant failure to comply with minimum Federal requirements for sludge use or disposal practices;

(ii) Significant failure to comply with permit conditions;

(iii) Failure to complete construction of essential elements of a sludge management facility or meet other key milestone dates specified in a permit;

(iv) Failure to provide required compliance monitoring reports or submission of reports that are so deficient as to cause misunderstanding and thus impede the review of the status of compliance;

(v) Significant noncompliance with other program requirements.

(2) The tabular summary will identify:

(i) The non-complying facilities by name and reference number,

(ii) The type of noncompliance, a brief description and date(s) of the event. (See list in paragraph (a)(1) of this section.) If records for a facility show noncompliance of more than one type under the sludge management program, the information should be combined into a single entry for each such facility.

(iii) The date(s) and a brief description of the action(s) taken to ensure timely and appropriate action to achieve compliance,

(iv) Status of the incident(s) of noncompliance with the date of resolution, and

(v) Any details which tend to explain or mitigate the incident(s) of noncompliance.

(b) *Annual report.* In addition to the information required by paragraph (a) of this section, the annual report shall include the following:

(1) Information to update the inventory of all sewage sludge generators and sewage sludge disposal facilities submitted with the program plan or in previous annual reports, including:

(i) Name and location,

(ii) NPDES, RCRA, Clean Air Act, and State permit number, if any,

(iii) Sludge management practice used,

(iv) Identification of non-complying facilities, and

(v) Sludge production volume.

(2) A summary of the number and type of violations by sludge use and disposal practice over the past year for Class I sludge management facilities.

(3) A list of Class I sludge management facilities brought into compliance since the last annual report;

(4) A summary of the results of periodic State compliance monitoring efforts to verify self-monitoring reports.

(5) Information on substantial noncompliance of Non-Class I Facilities which shall include:

(i) A tabular listing which identifies:
(A) The non-complying facility by name and reference number,
(B) The type of noncompliance (see list in paragraph (a)(1) of this section),
(C) How long the facility has been in noncompliance, and
(D) What steps are being taken to bring these facilities into compliance;
(ii) A summary of the number and type of violations by sludge use and disposal practice over the past year by non-Class I sludge management facilities;
(iii) A list of non-Class I facilities that have been brought into compliance since the last annual report; and
(iv) A separate list of all facilities (along with any applicable permit numbers) that are six or more months behind in their schedules for achieving compliance.

Subpart C—Program Approval, Revision and Withdrawal

§ 501.31 Review and approval procedures.

(a) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If it is incomplete, EPA will identify the needed information.

(b) After determining that a State program submission is complete, EPA will publish notice of the State's application in the **Federal Register** and in enough of the largest newspapers in the State to attract statewide attention. EPA will mail notice to persons known to be interested in such matters, including all persons on appropriate State and EPA mailing lists and all permit holders and applicants within the State subject to sludge use and disposal requirements. The notice will:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;
(2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the **Federal Register** and indicate when and where the hearing is to be held;
(3) Indicate the cost of obtaining a copy of the State's submission;
(4) Indicate where and when the State's submission may be reviewed by the public;
(5) Indicate whom an interested member of the public should contact with any questions; and
(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(c) Within 90 days after determining that the State has submitted a complete program under § 501.11, the Administrator shall approve or disapprove the program based on the requirements of this part and of CWA and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(d) The State and EPA may extend the 90-day review period by mutual agreement.

(e) If the State's submission is materially changed during the 90-day review, either as a result of EPA's review or the State action, the official review period shall begin again upon receipt of the revised submission.

(f) Notice of program approval shall be published by EPA in the **Federal Register**.

(g) If the Administrator disapproves the State program he or she shall notify the State of the reasons for disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

§ 501.32 Procedures for revisions of State programs.

(a) Any approved State program which requires revision to comply with amendments to federal regulations governing sewage sludge use or disposal (including revisions to this part) shall revise its program within one year after promulgation of applicable regulations, unless the State must amend or enact a statute in order to make the required revision, in which case such revision shall take place within 2 years.

(b) State sludge management programs shall follow the procedures for program revision set forth in 40 CFR 123.62.

§ 501.33 Criteria for withdrawal of State programs.

The criteria for withdrawal of sludge management programs shall be those set forth in § 123.63.

§ 501.34 Procedures for withdrawal of State programs.

The procedures for withdrawal of sludge management programs shall be those set forth in § 123.64.

[FR Doc. 88-4864 Filed 3-8-88; 8:45 am]
BILLING CODE 6560-50-M

Federal Register

Wednesday
March 9, 1988

Part III

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Certification Procedures; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-3304-1]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Certification Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing revisions to the motor vehicle and motor vehicle engine emission certification procedures for 1990 and later model year light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines. The revisions under consideration are primarily intended to address emission control durability demonstration requirements pertaining to vehicle and engine manufacturers covered under the small-volume manufacturer and small-volume engine family regulations. Several minor changes are proposed which will affect all manufacturers.

EPA proposes that only firms having total U.S. sales not exceeding 300 units per year remain exempt from any durability testing requirement. This proposal would continue a small-volume certification program for firms selling fewer than 10,000 units annually. Firms in this category using what this proposal defines as "proven" technology would not experience a significant change from the way the current program works. Such firms would continue to be allowed the use of assigned deterioration factors (d.f.'s), although the methodology for determining those d.f.'s would be changed somewhat. Firms using "unproven" technology would be required to run a limited number of durability test vehicles (e.g., 50,000 miles for light-duty vehicles, etc.) to verify emission durability. Firms selling over 10,000 units will continue to be able to certify up to 10,000 units each year under the "small-volume engine family" provisions, as amended by this proposal. Because of the potential for reduced durability demonstration burden, those manufacturers eligible for the 300 or less sales exemption are clearly distinguished. For these reasons, EPA is also proposing to clarify its sales aggregation rules for determining eligibility for treatment as a small-volume manufacturer.

In addition, this proposal includes several minor changes that apply to all manufacturers completing the certification process. These changes essentially reflect actions currently being accomplished voluntarily by nearly all manufacturers completing the certification process. They include changes to the vehicle emission control label, establishment of a minimum mileage for emission-data vehicle service accumulation, and potential measures to give greater assurance that small-volume firms take reasonable steps to provide for maintenance and repair of emission control systems. The revisions are being proposed to assure the continuation of these actions and compliance by any new manufacturers requesting vehicle certification.

DATES: EPA will hold a public hearing beginning at 9:00 a.m., EST, April 26, 1988, in Ann Arbor, Michigan.

Persons wishing to provide testimony at the hearing should notify Mr. Cole, as noted below, not later than April 19, 1988. Any written comments must be received on or before May 26, 1988.

ADDRESSES: Interested parties are encouraged to participate in this rulemaking procedure by submitting comments to: Central Docket Section, U.S. Environmental Protection Agency, Room 4, South Conference Center (LE-131), Waterside Mall, 401 M Street SW., Washington, DC 20460; Attention: Docket No. A-85-30. Copies of materials relevant to this rulemaking proceeding are contained in Public Docket A-85-30 at the U.S. Environmental Protection Agency, Central Docket Section, Room 4, South Conference Center (LE-131), Waterside Mall, 401 M Street SW., Washington, DC 20460, and are available for review during normal business hours (8:00 a.m.-3:00 p.m.). As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. The public hearing will be held at the Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Charles D. Cole, Certification Policy and Support Branch, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668-4444.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Clean Air Act

Section 203(a)(1) of the Clean Air Act (the Act) prohibits the sale, offering for sale, the introduction into commerce, the delivery for introduction into commerce, or the importation (except by persons specified by regulation by the Administrator) of any new motor vehicle unless the vehicle is covered by a certificate of conformity issued by the Administrator under the authority of section 206 of the Act. Section 203(b) of the Act provides two exceptions to this requirement. The exceptions are: (1) The Administrator may exempt a vehicle for certain specified purposes (i.e., research, investigations, demonstration, training, or national security); and (2) a vehicle may be imported under regulations prescribed by the Administrator and the Secretary of the Treasury (U.S. Customs Service (Customs)) which ensure that the vehicle will be brought into conformity with applicable standards.

In addition, the Act places a limit on the maximum amount of durability mileage accumulation that EPA can require for certification purposes for those small-volume manufacturers whose projected total sales in the United States for any model year will not exceed 300 units. Section 206(a)(1) prohibits the Administrator from prescribing regulations requiring more than 5,000 miles or 160 hours to be accumulated on any test vehicle or engine for these manufacturers. Instead, the Administrator is directed to "apply such adjustment factors as he deems appropriate to assure that each such vehicle or engine will comply during its useful life." The determination of appropriate adjustment factors, known as deterioration factors (d.f.'s), is a primary focus of this proposal.

B. Applicable EPA Regulations

Under authority of the Act, EPA has not only promulgated regulations governing the certification of vehicles [1] to emission standards ("certification regulations"), but in addition has promulgated regulations governing the importation of nonconforming motor vehicles and motor vehicle engines [2] ("imports regulations"). EPA recently promulgated substantial revisions to the imports regulations [52 FR 36136, September 25, 1987]. Under the revised regulations, independent commercial importers (ICI's) ultimately will be required to obtain a certificate of conformity prior to importing and modifying most nonconforming vehicles or engines. EPA anticipates that the majority of these manufacturers will be eligible to seek certification under the EPA's current small-volume manufacturers certification regulations as discussed below.

The certification regulations historically have included special

[1] Unless otherwise specified, references to vehicles also pertain to heavy-duty engines.

[2] An imported nonconforming motor vehicle or engine is defined as a motor vehicle or engine which is not covered by a certificate of conformity prior to final or conditional importation and which has not been finally admitted into the United States under 40 CFR 85.1505, 85.1509, or 85.1512 (if applicable).

provisions [for example, see 40 CFR 86.085–24 (e)] which allow small-volume manufacturers [3] to request a reduction in the number of required test vehicles and allow certification to be based on d.f.'s provided by EPA rather than actual durability test results. The d.f.'s provided by EPA are often referred to as "assigned d.f.'s." Beginning in 1975, EPA published applicable assigned d.f.'s for each vehicle or engine category through EPA's advisory circular manufacturer guidance system.

The assigned d.f.'s obviate the need for the manufacturer to spend the money necessary to build, accumulate mileage and emission test a durability-data vehicle to develop its own d.f.'s. No other specific durability tests are required of the manufacturer as part of the current small-volume manufacturer certification program. Nonetheless, as with other manufacturers, those manufacturers certifying under the small-volume manufacturer certification regulations are responsible under the Act and the regulations for compliance of their in-use vehicles for their statutory useful lives, so long as the vehicles are properly maintained and used.

Deterioration factors are used to predict useful life emission performance from the results of low mileage test vehicles. These low mileage test vehicles (known as emission-data test vehicles) currently are tested at a mileage (typically between 2,500 and 5,000 miles) which the manufacturer determines is at or beyond the point where new engine and emission control system emission performance has stabilized. The likelihood of compliance with the applicable emission standards is then projected by comparing the emission-data vehicle test results, adjusted by the d.f.'s, to the applicable standards. The d.f. adjustment is intended to account for expected useful life in-use emission performance deterioration. Absent other information which would indicate the significant potential for in-use emission noncompliance, if these predicted emission values are equal to or less than the emission standards, emission compliance is sufficiently demonstrated to permit issuance of a certificate of conformity. The use of assigned d.f.'s significantly reduces the amount of time and cost incurred by the manufacturer in obtaining d.f.'s by performing actual durability testing. However, since an emission-data test vehicle is not subject to actual durability testing, there is some risk that the assigned d.f.'s may understate actual production vehicle deterioration in some cases. If production vehicles actually deteriorate at a faster rate than represented by the assigned d.f.'s, there is an increased possibility of in-use noncompliance and excess in-use emissions.[4]

Significant revisions to the small-volume manufacturers certification procedure were promulgated (46 FR 16259) in March 1981 to lessen the administrative and cost burden of the certification regulations on small-volume manufacturers. The optional (assigned d.f.) certification procedures were extended to small-volume manufacturers whose total yearly projected sales were fewer than 10,000 units. Some additional, relatively small manufacturers then could qualify for the durability exemption. The number of emission-data test vehicles was also reduced and the reporting burden greatly simplified, all for the purpose of reducing small-volume manufacturers' compliance demonstration costs.[5]

EPA realized that, without vehicle demonstration of emission control durability, there was some risk that the vehicles certified under the small-volume procedures might fail emission standards in use. However, the Agency anticipated no significant air quality risk under the revised regulations for several reasons. First, only a small number of manufacturers were expected to certify under the expanded regulations. Second, most small-volume manufacturers certifying at that time were using original equipment manufacturer (OEM) engine, drive line and emission control components which had been fully developed and evaluated for in-use durability by the OEM. Third, those small-volume manufacturers using other manufacturers' components typically had cooperative agreements with the OEM. These small-volume manufacturers then knew what running changes (e.g., new calibrations, emission control designs, etc.) were implemented by the OEM in the production of engine, drive train, or emission control components that could affect the small-volume manufacturer's vehicles.

In October 1981, EPA promulgated cost reduction revisions to the general certification regulations applicable to manufacturers with sales of 10,000 or more units. Included in these revisions was a provision which allows these larger manufacturers to certify up to 10,000 units of sales using assigned d.f.'s. Since this provision is very similar to that included in the small-volume manufacturer regulations, EPA is proposing similar revisions to both programs to assure technical improvements in assessing the expected emission performance of engine families the manufacturers wish to certify.

C. The Impact of Additional New Small-Volume Manufacturers

In general, the recent revisions to the rules covering the importation of nonconforming vehicles ultimately will require ICI's to obtain certification to import such vehicles. Most manufacturer-importers [6] that previously imported under "modification and test" provisions, rather than under a certificate of conformity, will eventually have to come in under the certification process. (The modification and test alternative will be reduced during a phase-in period between 1988–1993 and eventually limited to vehicles over five production years old (40 CFR 85.1509).) The vast majority of these importers are expected to certify according to the small-volume manufacturers certification regulations.

In addition, EPA has noted an increase in inquiries from prospective domestic manufacturers which could qualify for small-volume certification. The expected number of ICI and new domestic manufacturers seeking certification could substantially increase usage of the small-volume manufacturers' certification regulations.

The current certification procedures should result in improved in-use emission performance of the imported nonconforming vehicles brought in under the certification option since, via

[3] Prior to the 1982 model year, EPA regulations only allowed small-volume certification procedures to a manufacturer whose projected annual sales in the United States were less than 2,000 units in any vehicle or engine category

[4] Receipt of a certificate of conformity should not be interpreted as a license or approval to produce noncomplying vehicles. The certification program serves as a screen to prevent as many problem designs as possible from entering production. Vehicles which have been properly maintained and used, which later are determined to be failing emissions standards, are subject to recall by EPA under its authority in section 207(c) of the Act.

[5] The purpose of the small-volume certification regulations is to minimize the cost of running tests to demonstrate compliance with emissions standards prior to the sales of new vehicles. However, there is no relaxation in the manufacturer's responsibility under the Act to perform testing necessary to develop and build a product which will comply with emission standards over the regulated useful life. A key feature of the small-volume certification procedures is to draw upon information a responsible manufacturer should have available to assure itself that its product has been sufficiently developed and evaluated so that it and EPA can reasonably expect the product will comply with emission standards during in-use operation.

[6] Under section 216(1) of the Clean Air Act, any person engaged in importing new motor vehicles for resale is included in the definition of "manufacturer."

the assigned d.f.'s, some anticipated emission performance deterioration is considered prior to certification. However, the large-scale use of the small-volume manufacturers certification procedures by numerous new manufacturers, including domestic manufacturers as well as ICI's, was not envisioned at the time the current regulations were promulgated in 1981. As previously discussed, although small-volume certified vehicles demonstrate compliance with emission standards at low mileage, the useful life emission compliance of some vehicles may be questionable. EPA has no formal program or procedure for evaluating each small-volume manufacturer's vehicle designs for physical signs that in-use emission deterioration may be excessively high. However, on occasion, EPA has noted potentially inadequate designs which, in EPA's opinion, presented a high risk of emission failure. For example, although passing emission standards at low mileage, a vehicle with an emission-related hose or electrical wire routed too close to a high temperature source such as an exhaust manifold or catalytic converter, could rapidly deteriorate under extended in-use operation. The hose or wire could fail causing an emission control system malfunction and vehicle emission failure potentially undetected by the vehicle operator. In the high-risk cases discovered by EPA, EPA has been successful in working with the vehicle manufacturer to improve its design. However, with the new potential for expanded use of the small-volume manufacturer regulations, it will be more difficult for EPA to detect each potentially inadequate design. EPA wants to limit to the extent possible the in-use noncompliance risk associated with certifying such potentially inadequate or unproven designs. Therefore, EPA is proposing revisions to the certification procedure to improve EPA's ability to screen out potentially inadequate designs and limit the number of unproven designs before these designs are certified.

II. Summary of the Proposals

A. Durability Demonstration

EPA proposes to address durability requirements for three categories of manufacturers: (1) Small-volume manufacturers whose annual sales do not exceed 300 units, (2) small-volume manufacturers with annual sales between 300 and 10,000 units, and (3) large-volume manufacturers (with annual sales of 10,000 units or greater) wishing to certify small-volume engine families. The durability procedures which the manufacturer is required to comply with will vary depending on the manufacturer's annual sales.

The Act limits the amount of durability mileage accumulation EPA can require on vehicles built by manufacturers whose annual sales do not exceed 300 vehicles. It will continue to be EPA's responsibility to determine appropriate d.f.'s for these firms. Currently the guidelines for determining these d.f.'s are contained in Advisory Circular Number (A/C No.) 51C. A copy of A/C No. 51C has been placed in the public docket. As is current practice, the manufacturer has the responsibility for providing sufficient information and/or data on the manufacturer's vehicles and emission control systems to allow EPA to determine the appropriate assigned d.f.'s.

EPA is proposing revised durability requirements for manufacturers with total projected annual sales between 300 and 10,000 units. Changes to the existing regulation are minimized for manufacturers using proven emission control components or systems (and fuel metering systems) [7] because EPA believes that deterioration of these components or systems is adequately represented by assigned d.f.'s. This less stringent requirement is meant to encourage manufacturers to use proven components in their small-volume designs. EPA is proposing more extensive changes for manufacturers using unproven emission components (and fuel metering components) in their designs. These changes will increase EPA's confidence in the ability of a vehicle equipped with unproven emission control components and systems [8] to meet emission standards for the vehicle's useful life.

EPA proposes to allow manufacturers using proven emission components and systems (and fuel metering systems) to continue to certify using assigned d.f.'s. However, the assigned d.f.'s will no longer be supplied by EPA, but will be determined by the manufacturer based on good engineering judgment, subject to certain conditions as described in the following paragraph. Not allowing a manufacturer to simply assume the validity of EPA-supplied d.f.'s to its product is consistent with the intent of the existing regulations and the Act which presume that the manufacturer has determined that its vehicles are likely to comply in use prior to requesting a certificate. In addition, the manufacturer is likely to have development data and other relevant information available for the purpose of assuring itself of this expected in-use compliance. These data and other information should be directly useful in determining the appropriateness of potential assigned d.f.'s. Therefore, requiring the manufacturers to determine the appropriateness of the assigned d.f.'s used in certification should represent an insignificant additional burden on manufacturers that have been complying with the Act.

EPA proposes that the manufacturer-determined assigned d.f.'s not be less than the average of the d.f.'s. from all engine families previously certified by the manufacturer (hereinafter referred to as manufacturer-specific average d.f.'s). In certain circumstances, the manufacturer-specific average d.f.'s may be greater than the 70th percentile of the d.f.'s from all engine families previously certified by the manufacturer (hereinafter referred to as manufacturer-specific 70th percentile d.f.'s) due to outlier data. In these limited cases, the manufacturer may use the manufacturer-specific 70th percentile d.f.'s to offset the data from engine families with unusually high d.f.'s ("outlier data"). If the manufacturer does not have at least two data points to calculate manufacturer-specific average d.f.'s, the manufacturer-determined assigned d.f.'s may not be lower than the 70th percentile industrywide assigned d.f.'s as calculated by EPA.

For manufacturers using previously unproven emission control systems (and fuel metering systems) EPA is proposing to require durability mileage accumulation for emission control systems representing a percentage of the manufacturers' sales equipped with unproven emission control components or systems (and fuel metering systems). The manufacturer will be required to complete a durability demonstration

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[7] Proven emission control components or systems (and fuel metering systems) are components or systems that have completed full durability testing evaluation over a vehicle's useful life in some other certified engine family or are, as determined by EPA, of comparable functional quality and manufactured using comparable materials and production techniques as components or systems which have been durability demonstrated in some other certified engine family.

[8] Unproven emission control components or systems (and fuel metering systems) are components or systems that have not completed full durability testing evaluation over the useful life of a vehicle in some other certified engine family. In addition, unproven emission control components or systems (and fuel metering systems) are components or systems that are not of comparable functional quality, and manufactured using similar production materials and techniques, as components which have been demonstrated to be durable in some other certified engine family.

each year on remaining or new unproven engine/emission control system combinations representing a minimum of 25 percent of the manufacturer's "unproven" sales. The remainder of the manufacturer's annual unproven sales will be certified using assigned d.f.'s determined by the manufacturer, but no lower than those assigned d.f.'s used to certify its proven systems.

Manufacturers with annual sales greater than 10,000 units will be allowed to certify up to 10,000 units per year using assigned d.f.'s. These manufacturers must determine the appropriate d.f.'s in the same manner as described above for manufacturers in the 300 to 10,000 sales group.

B. Aggregation of Firms for the Purpose of Determining Applicability of Small-Volume Regulations

Presently when determining the applicability of small-volume certification procedures, EPA aggregates the sales of multiple importers who have contractual agreements or are subsidiaries of the same parent automobile manufacturer. EPA proposes to clarify the wording of the current aggregation criteria to assure appropriate implementation and intended effect.

C. Other Changes

EPA is also proposing the following changes to the certification procedures which will be applicable to both small-volume manufacturers and other manufacturers.

Vacuum hose routing—EPA proposes to require light-duty vehicle and light-duty truck manufacturers to include a vacuum hose routing diagram on the vehicle emission control information label. This information is currently required by the State of California for vehicles sold in that state and is voluntarily being included on other vehicles by most manufacturers.

Minimum EDV mileage—The current rules set no lower mileage limit for EDV's. EPA now proposes a 2,000 mile minimum (62 hours for catalyst equipped heavy-duty engines) requirement on all EDV's. In practice, no manufacturer has used an EDV with less than 2,000 miles to certify.

In-use vehicle maintenance—EPA is requesting public comment on whether availability of service by small-volume manufacturers will be adequate to meet the warranty requirements of section 207(b) of the Act. In the event that EPA decides that service and parts availability may be a problem, EPA is proposing changes which should increase the likelihood that owners will also be able to obtain proper maintenance and warranty service. EPA is proposing that each small-volume manufacturer provide a statement to EPA at the time it requests certification stating that it has provided the vehicle purchaser a list of emission and emission-related parts and instructions for performing any maintenance which might be expected to affect emission performance. Additionally, EPA proposes that the manufacturer notify the owner, at the time of sale, of the nearest maintenance location if maintenance service is not available at the authorized point of sale for its vehicle, and assure the purchaser that emission-related service parts will be available at or through these service locations. Finally, EPA is proposing that all manufacturers already required to have an insurance policy guaranteeing warranty service [40 CFR 85.1510], provide evidence of the fully paid policy or proof of a contractual agreement to purchase insurance as a prerequisite to certification.

Reduction in the number of EDV's—EPA is proposing to reduce the number of EDV's required to one vehicle in those engine families certified by large-volume manufacturers under the small-volume engine family certification procedure.

Elimination of EPA-determined assigned d.f.'s in specific cases—EPA is proposing to eliminate EPA-assigned d.f.'s in those categories where the current certification regulations direct the manufacturer to determine the appropriate emissions deterioration. The applicable categories are light-duty trucks (LDT's) or heavy-duty engines (HDE's) for exhaust emissions and light-duty vehicles (LDV's) and LDT's for evaporative emissions.

III. Proposed Revisions to the Small-Volume Manufacturers and Small-Volume Engine Family Certification Durability Program

A. Durability Requirements

The current small-volume manufacturers certification procedure allows eligible small-volume manufacturers to certify up to 9,999 units (combined total sales of LDV's, LDT's and HDE's) per year using assigned d.f.'s. Under the current regulations no other durability demonstration is required. As a result, the small-volume manufacturer certifying its product line has the same durability demonstration responsibility whether it uses components with proven or unproven emission durability in its design. Only when EPA has information indicating that a system is likely to be non-durable will EPA not certify until EPA's concerns are resolved.

EPA is proposing to change the small-volume manufacturers' durability demonstration by: (1) Proposing to use manufacturer-specific d.f.'s when sufficient data is available; (2) proposing durability procedures for unproven emission control components and systems (and fuel metering systems); and (3) proposing to eliminate the availability of assigned d.f.'s in those applications where the current certification procedures direct the manufacturer to determine appropriate deterioration factors for the vehicles.

1. Manufacturers Certifying Systems With Proven Technology Using Manufacturer-Specific D.F.'s

The current regulations provide EPA with wide discretion on how to determine appropriate assigned d.f.'s. EPA is proposing to revise the certification regulations to change the method used in determining assigned d.f.'s. Under this proposal, the current EPA policy of industrywide assigned d.f.'s would be replaced by manufacturer-determined assigned d.f.'s in certain circumstances.

EPA is proposing that these assigned d.f.'s be determined by the manufacturer using its good engineering judgment subject to certain conditions as previously described.[9] EPA is also proposing that the manufacturer-determined d.f.'s be no lower than the manufacturer-specific average d.f.'s to preclude manufacturers from determining inappropriately low assigned d.f.'s. Using this method may result in specific cases where the manufacturer-specific average d.f.'s of a particular firm are higher than the manufacturer-specific 70th percentile d.f.'s for that same firm due to outlier data. In these limited cases, the manufacturer may use the manufacturer-specific 70th percentile d.f.'s for certification to reduce the impact of the outlier data.[10]

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[9] Note that, as discussed below, EPA is proposing to no longer provide assigned d.f.'s for LDT and LDV evaporative emissions and LDT and HDE exhaust emissions for manufacturers with annual sales of over 300 units. Therefore, for these manufacturers, assigned d.f.'s would only apply to the general engine and emission control system categories of gasoline-fueled and diesel-fueled LDV's.

[10] Of course, if the high d.f.-producing engine family is still in production it must continue to use its own specific d.f.'s for certification of that particular engine family unless the manufacturer completes a replacement durability vehicle which produces lower d.f.'s.

If the manufacturer does not have sufficient data points to derive manufacturer-specific d.f.'s (i.e., d.f.'s from less than two engine families), then the manufacturer-determined assigned d.f.'s must not be less than the industrywide d.f.'s as published by EPA.[11] For example, if a small-volume manufacturer has generated actual durability test results for a portion of its product line, assigned d.f.'s can be calculated on the basis of manufacturer-specific data. However, if a small-volume manufacturer has not previously generated sufficient durability test results, EPA will continue to publish industrywide assigned d.f.'s for proven systems. EPA is also proposing to specify in the certification regulation that the EPA-provided assigned d.f.'s will be periodically redetermined to estimate the 70th percentile industrywide d.f.'s.

Manufacturer-determined assigned d.f.'s would be more representative of a manufacturer's particular technological capability than the current practice of using industrywide data to determine assigned d.f.'s. Experience has shown that each unique emission system design is liable to perform differently in use, and therefore each system is likely to deteriorate at a different rate. Actual certification d.f.'s generated using durability-data vehicles often vary widely between manufacturers. Therefore, industrywide assigned d.f.'s are not in all cases accurate predictors of every manufacturer's designs. Manufacturer-determined d.f.'s benefit manufacturers with good designs because they get lower d.f.'s. By the same token, it is appropriate for manufacturers with a history of deterioration higher than the industry average to be assigned higher d.f.'s. Since these data are specific to a particular manufacturer and, therefore, represent a manufacturer's actual capability, it is more appropriate to use the manufacturer-determined assigned d.f.'s rather than industrywide d.f.'s.

Incorporating the basis for the assigned d.f.'s more specifically in the small-volume manufacturers certification regulations is intended to more clearly identify the method to be used to certify small-volume manufacturer and small-volume engine family sales. By putting more specific language in the regulations, the industry will be kept as aware as possible of procedures that will have an impact on them. Secondarily, putting the procedural details in the regulations should reduce the need for additional guidance and therefore reduce the administrative burden of the small-volume manufacturers' program.

EPA realizes that the majority of the small-volume manufacturers (manufacturers with total sales of less than 10,000 units) do not have current durability-data vehicle results to use to calculate their manufacturer-specific d.f.'s. Small-volume manufacturers were previously not required to test and evaluate durability-data vehicles. Thus, EPA will provide industrywide assigned d.f.'s for small-volume manufacturers (using proven emission systems) who have not run sufficient (i.e., two) durability vehicles to calculate manufacturer-specific assigned d.f's within an engine and emission control system category.[12] Since section 206(a)(1) of the Act does not permit EPA to require that manufacturers of fewer than 300 vehicles per year complete full durability testing, the industrywide d.f.'s will also be available to them.

2. Manufacturers Certifying Systems With Unproven Technology

EPA is proposing placing new durability vehicle requirements on small-volume manufacturers with sales over 300 units when certifying vehicles equipped with unproven technology emission systems. EPA will define unproven technology as emission control components or systems (and fuel metering systems) which have not been previously certified by EPA on engine families which have been certified with full (e.g., 50,000 mile) durability demonstration. For systems with unproven components, EPA often lacks information that would demonstrate that the emission system is sufficiently durable, and sometimes has insufficient data to determine which particular set of d.f.'s are the most technically appropriate for those system components. In the current program, if EPA has information suggesting that a system is *not* likely to be sufficiently durable, then the Agency will elect not to certify the vehicle design until the Agency's concerns are resolved. Otherwise, EPA has typically certified the unproven design on the basis of industrywide assigned d.f.'s. In such cases, EPA would prefer to rely on durability vehicle data to demonstrate compliance.

EPA considered two alternatives for durability demonstration when small-volume manufacturers use unproven emission control components or systems: (1) Require testing of durability vehicles representing all of the manufacturer's sales equipped with unproven emission control components or systems; or (2) require new durability vehicles representing some percentage of the manufacturer's sales each year in each compliance category that is equipped with unproven emission control components or systems.

The first alternative would provide durability testing representing all of the manufacturer's vehicles equipped with unproven emission control technology. This alternative provides the highest degree of confidence in the vehicles' abilities to comply with emission standards for the vehicles' useful lives. However, this alternative could also be the most costly for a small-volume manufacturer. EPA is not proposing this alternative.

To lessen the cost impact of durability demonstrations on the manufacturers, EPA is proposing the second alternative for manufacturers of more than 300 vehicles per year. The second alternative would require such manufacturers each year to first test and evaluate durability vehicles representing some percentage of the unproven technology sales in each engine and emission control system category equipped with unproven technology. Carryover data could not be used to satisfy this durability data requirement. Upon successful completion of the durability testing requirement and certification of those vehicles, the remainder of these small-volume manufacturers' unproven emission control technology sales for that year may be certified using manufacturer-determined assigned d.f.'s.

EPA is proposing to require durability data for engine/emission control system combinations representing a minimum of 25 percent of each manufacturer's unproven technology sales each year. Twenty-five percent durability demonstration would provide reasonable, short-term confidence that the manufacturer is capable of designing and building vehicles which will have useful life emissions compliance. In addition, requiring only 25 percent of the unproven systems to be represented by durability-data vehicles each year would minimize the yearly cost impact on the manufacturer and allow a phase-in period for the manufacturer to demonstrate the durability of its unproven technology and to generate the

[11] Industrywide assigned d.f.'s currently are calculated using the 70th percentile of the industrywide durability data base. The 70th percentile d.f.'s provide a larger safety margin than, say, the 50th percentile or average d.f.'s and were chosen in part to reflect that the data is not specific to one manufacturer.

[12] These manufacturers will determine their own most appropriate d.f.'s. However, the d.f.'s used cannot be lower than the industrywide d.f.'s provided.

data necessary to calculate manufacturer-specific assigned d.f.'s.

Once a durability-data vehicle has been run successfully to represent an unproven technology system, that system and closely comparable system designs of that manufacturer would become proven technology.[13] The manufacturer could use the d.f.'s generated for those systems for certification of the sales represented by the durability vehicles during that year and for carryover purposes in subsequent years.

Of course, for manufacturers of less than 300 vehicles per year, EPA will continue to allow the use of industrywide assigned d.f.'s for certification of all vehicles, including those vehicles equipped with unproven technology, meeting the guidelines of A/C No. 51C.

3. Exhaust Emissions for LDT's and HDE's and Evaporative Emissions for LDV's and LDT's

EPA is proposing that EPA-derived assigned d.f.'s no longer be made available to small-volume manufacturers with sales over 300 units per year for the purpose of certifying LDT's or HDE's for exhaust emissions or for certifying LDV's and LDT's for evaporative emissions. This proposal also applies to large-volume manufacturers certifying according to the small-volume engine family certification regulations. In each of these cases, the current regulations (e.g., 40 CFR 86.085–24(c)) direct each manufacturer not covered by the small-volume procedures to determine its own d.f.'s. The manufacturers are to use good engineering judgment in selecting the engines, subsystems, or components used to determine the emission deterioration so that their emissions deterioration may be expected to represent that of in-use vehicles or engines. This proposal extends this provision (for determining their own d.f.'s) to small-volume manufacturers with sales over 300 units per year and large-volume manufacturers certifying small-volume engine families.

In adopting the existing regulations, EPA anticipated that a manufacturer might make use of development data, bench test data or other available sources of information to develop appropriate d.f.'s. Using this information would be less costly to the manufacturer compared to running a durability-data vehicle for its useful life. In this regard, allowing a manufacturer to determine its own d.f.'s can provide substantial cost savings similar to the savings afforded to manufacturers by assigned d.f.'s. In addition, by providing this flexibility and using these other data, manufacturers should be able to come up with d.f.'s which are more technically representative of emissions deterioration than EPA-derived assigned d.f.'s. Under this proposal, these benefits will also be realized by small-volume manufacturers with sales over 300 units per year and large-volume manufacturers certifying small-volume engine families.

Moreover, in these specific certification categories, there appears to be no technical benefit in using EPA-derived assigned d.f.'s rather than manufacturer-derived d.f.'s. Further, the current assigned d.f. program requires a manufacturer to demonstrate the appropriateness of the assigned d.f.'s to the manufacturer's vehicles. The manufacturer's responsibility under the assigned d.f. program is very similar to the manufacturer's responsibility when it is required to independently determine the appropriate d.f.'s under the current certification procedures. Finally, for large-volume manufacturers certifying small-volume engine families the manufacturer-specific d.f.'s for these categories of vehicles and engines would be based on manufacturer-determined d.f.'s for the rest of the product line.

For these reasons, EPA is proposing to delete the assigned d.f. option for all manufacturers with sales over 300 units for the specific applications of LDT exhaust and evaporative emission, and LDV evaporative emissions and HDE exhaust emissions. This proposal does not extend to manufacturers with annual sales of 300 units or less. Consistent with section 206(a)(1) of the Act, EPA will continue to provide assigned d.f.'s for these manufacturers. These very small manufacturers may not have as much development data and other sources of durability information to allow them to as easily determine appropriate design-specific d.f.'s as larger volume manufacturers would have.

4. Cost Impact of Durability Program Revisions

EPA analyzed the cost impact of the proposed revisions to the small-volume manufacturers durability program. Manufacturers using unproven emission control components or systems will be required to complete some durability vehicle testing which will increase the cost of certification for these manufacturers. However, the d.f.'s developed from the durability-data vehicles should be more representative of the vehicles' emission deterioration than assigned d.f.'s. This will provide greater assurance of useful life emission compliance. Also, EPA anticipates that manufacturers often will elect to use proven emission control hardware (which is usually readily available at a reasonable cost) rather than unproven systems due to (1) emission performance reliability and (2) lower compliance demonstration costs.

There should be no significant cost impact from the proposed changes to provide for manufacturer-determined assigned d.f.'s, and the proposed elimination of assigned d.f.'s for exhaust emission for LDT's and HDE's and evaporative emissions for LDV's and LDT's, for manufacturers with sales over 300 units per year.

EPA's analysis of the cost impact of the proposed revisions to the small-volume manufacturers and small-volume engine family durability program has been placed in Public Docket No. A–85–30.

B. Maintenance and Warranty Service

The current certification program presumes: (1) That emissions warranty coverage required by sections 207(a) and 207(b) of the Act will be supplied by the manufacturer to correct any covered emission and emission-related problems identified during a vehicle's useful life; and (2) that manufacturers will have qualified service facilities and maintenance parts available for use by their customers. In-use emission performance is likely to be worse than that predicted in the certification program if, due to lack of either of these services, vehicles are unable to obtain proper maintenance and warranty service.

EPA is concerned that some small-volume manufacturer vehicles might not be assured warranty service by the manufacturer. In the case of ICI's, the recent imports regulations amendments (52 FR 36136, September 25, 1987) address this issue by requiring the certificate holder who modifies imported nonconforming vehicles to obtain an insurance policy to assure payment of in-use emission warranty repairs if the manufacturer defaults on its obligation. While EPA expects that in most cases the existing regulations (including the recent imports regulation amendments) will assure the availability of warranty service, in some cases (e.g., due to inexperience of some small-volume manufacturers), they may not.

[13] A closely comparable design is a design that would qualify under EPA's guidelines for durability data carryover from a system that has completed durability testing to another system. The carryover guidelines are contained in A/C No. 17F. A copy of A/C No. 17F has been placed in the public docket.

Therefore, EPA is proposing that proof of this insurance be provided to EPA at the time of the manufacturer's application for certification. This makes the availability of the insurance a condition of receiving certification and will help ensure that small-volume manufacturers fulfill their warranty responsibility. Requiring the manufacturer to provide proof that the insurance policy has been purchased or proof of a contractual agreement to purchase insurance prior to receiving certification should pose no additional burden to the manufacturer except that the manufacturer may have to obtain the insurance policy a month or two earlier than if proof of purchase were not a condition of certification.

Second, without adequate service facilities and maintenance parts the vehicle owners cannot properly maintain their vehicles. EPA is somewhat concerned that under the existing regulations some vehicles might be certified as capable of complying with emission standards for the vehicles' useful lives (if properly maintained and used) when in fact some emission and emission-related parts might not be available to properly maintain the vehicles. Without proper maintenance, the in-use emission deterioration is likely to be significantly greater than predicted in the certification program.

Although the small-volume manufacturer is subject to the same sanctions as the large-volume manufacturer under the Act, other considerations may make the large-volume manufacturer more likely to make service facilities available for maintenance and warranty service for the emission systems of vehicles they sell. The large-volume manufacturer's future vehicle sales are in part based on current customer satisfaction which can be influenced by the vehicle manufacturer's maintenance services. Further, most dealerships for large-volume manufacturers view their service facilities as a major source of revenue. These incentives are substantial, as evidenced by the fact that it is most common for large-volume manufacturers to combine their sales dealerships with full service facilities. Therefore, EPA sees no need for further assurance that large-volume manufacturers will make service available.

By contrast, the small-volume manufacturers' future sales may not be as closely influenced by the manufacturers' maintenance services. Small-volume manufacturers' vehicles are, in most cases, exotic, expensive, "one of a kind" limited production, or, as in the case of ICI's, modified versions of OEM vehicles. Some small-volume manufacturer sales are probably substantially influenced by brand familiarity. Other small-volume manufacturer sales may be influenced by the consumer's desire to purchase an exotic vehicle. In either case, the consumer may travel considerable distances to purchase the vehicle, thereby making it difficult to return to the dealer for maintenance. As a result, the purchaser may not be as influenced by the dealer's maintenance services, or the lack of maintenance services. In addition, some small-volume manufacturer vehicles, especially the more exotic vehicles, may be once-in-a-lifetime purchases. Again, since the consumer may never purchase another exotic vehicle or at least not the same make, the consumer may not be influenced by the availability of maintenance services.

In the case of ICI's, some vehicle purchasers may think that service is available from the OEM maintenance shop. The vehicle purchaser may not care (at the time of purchase) about such issues and the ICI may not have a marketing incentive to identify available service locations. Moreover, that same consumer may not be aware of, or may not be willing to make any significant effort to have repaired an emission system malfunction that does not otherwise affect the normal operation (i.e., driveability) of the vehicle. Therefore, although EPA currently believes that small-volume manufacturer warranty service generally should be available, EPA is concerned that, under the current program, some small-volume manufacturers may not have sufficient incentives to provide adequate service availability. Without additional incentive to these manufacturers to provide maintenance and warranty service, EPA would be somewhat concerned that the emission systems of some of these vehicles might not be properly maintained. EPA invites public comment on whether availability of service by small-volume manufacturers will be adequate to meet the warranty requirements of section 207(b) of the Act.

In the event that EPA decides that service and parts availability may be a problem, EPA is proposing two changes which should increase the likelihood that owners will also be able to obtain proper maintenance and warranty service from small-volume manufacturers. For the reasons just discussed, these changes will only apply to small-volume manufacturers. The first proposal addresses the availability of emission and emission-related parts and service. The second proposal addresses alternatives to ensure that warranty service will be performed.

First, EPA is proposing that as a condition of certification, the small-volume manufacturer provide a written statement prior to certification affirming that it will have qualified service facilities [14] and repair parts conveniently available [15] in the field for its customers. Specifically, prior to certification the manufacturer must state that it will provide each vehicle purchaser a list of emission and emission-related service parts, including part number designations and sources of parts, for all engine and emission control system parts which might affect vehicle emission performance throughout the full useful life of the vehicle. It must also state that the manufacturer will have qualified service facilities and emission and emission-related spare parts available to service its vehicles. In addition, the small-volume manufacturer must agree to provide the vehicle purchaser at the time of sale with information identifying the closest service facility to the point of sale authorized to perform emission-related warranty service if this service is not available at the point of sale. The manufacturer must also state in its application for certification that vehicle purchasers will be informed of the closest service facility if service is not available at the point of sale.

Second, in addition to the above statement, EPA proposes to require that the small-volume manufacturer provide EPA, upon request, evidence or other information demonstrating that: (1) Qualified service facilities are available at the point of sale of the manufacturer's vehicles, or the vehicle purchaser will be notified of the closest service facilities at the time of sale; and (2) that necessary emission and emission-related parts are readily available at or through these repair facilities. Failure to fulfill this requirement could result in the certificate of conformity being suspended or revoked. Examples of the evidence or other information EPA currently considers acceptable as

[14] Qualified service facilities are service facilities which have: Vehicle maintenance instructions; trained service personnel; applicable tools and equipment, including special tools if required; and spare parts for the manufacturer's vehicles.

[15] Conveniently Available—For small-volume manufacturers "conveniently available" means that the vehicle manufacturer maintains an inventory of all spare parts or has made arrangements for the parts manufacturers to supply the parts by expedited shipment (e.g., UPS, overnight xpress, etc.).

demonstrating service facilities and spare parts availability include: Photographs of service facilities; personnel rosters with personnel qualifications; inventory list of spare parts available at the service facility and/or the manufacturers; copy of nearest service facility location notice the manufacturer issued to the vehicle purchaser, if applicable.

EPA analyzed the potential impact of the provisions in the event EPA determines that they are necessary. Providing the information proposed in this section should represent an insignificant administrative burden for the manufacturers, since the responsible manufacturer should already be obtaining the required insurance and providing these services and parts in order to meet its obligations under the Act and the existing regulations.

C. Vacuum Hose Routing Diagram

EPA is proposing that a vacuum hose routing diagram be included on the vehicle emission control information label. This will aid in-use vehicle inspection by making it easier for vehicle inspectors to verify that the emission control hardware is properly installed. Further, it should assist mechanics in checking their work for proper installation. Such a vacuum hose routing diagram is currently required by State of California motor vehicle regulations and is voluntarily included on the vast majority of vehicles sold in the rest of the U.S. Although most manufacturers are already voluntarily installing a vacuum hose routing diagram on all their vehicles, EPA wants to be sure that all manufacturers, including new manufacturers, also include a routing diagram on their vehicles. Therefore, EPA proposes that all manufacturers be required to include a vacuum hose routing diagram on their vehicles. Since this is a standard industry practice voluntarily being implemented by most manufacturers, EPA believes this amendment will represent an insignificant burden to manufacturers.

EPA analyzed the impact of the proposed revision to the vehicle emission control information label. EPA estimates that the cost for including the proposed additional information on the label should not result in a significant increase in the manufacturer's costs. The additional cost is estimated to be only a few cents per label. EPA believes that the additional information on the label will significantly improve maintenance of the vehicles. EPA anticipates that the improved maintenance benefits will far outweigh the additional cost of the label. (See cost analysis in Public Docket A–85–30.)

D. Aggregation

EPA put in place several constraints to stop a large manufacturer from attempting to certify as several small-volume subdivisions when it adopted its 1981 regulations (46 FR 16259, March 12, 1981). In the existing regulations and in their implementation, EPA has aggregated the projected sales of all firms having any significant financial or managerial link, including common ownership. Section 86.085–1(e) of the regulations specifies that "vehicles produced at facilities leased, operated, controlled, supervised, or in ten percent or greater part owned by the manufacturer shall be counted in calculating the total sales of the manufacturer." Also, according to § 86.084–14(b)(2), where there is more than one importer or distributor of vehicles manufactured by the same person, the sales of all these importers and distributors shall be aggregated. EPA generally has not applied this provision to aggregate sales of genuinely independent ICI's who import nonconforming vehicles for resale, modify these vehicles to allow them to meet emission standards, and thus become manufacturers of the vehicle.

EPA proposes to add three provisions to the current regulations. First, EPA proposes to change the wording of 40 CFR 86.085–1(e) in order to preclude possible misunderstanding and to clarify its interpretation. EPA is proposing to make clear that if one firm leases, operates, controls, supervises or in ten percent or greater part owns production facilities used by another manufacturer, then the combined sales of both manufacturers (or multiple manufacturers in the case of three or more) is used to determine the eligibility of each manufacturer to certify under the small-volume manufacturer rules. EPA has always interpreted the reference to "manufacturer" in this provision as applying to all manufacturers in the relationship. Thus, EPA has always used the combined sales of both manufacturers in determining small-volume manufacturer eligibility for each and every manufacturer involved in the arrangement.

Second, in order to clarify the interpretation of "controlled" as used in 40 CFR 86.085–1(e), EPA proposes to add the wording that where two or more firms have common corporate officers who are responsible for the overall direction of the companies, the sales should be grouped together. The interrelationship resulting from such common corporate officers is consistent with the other financial and managerial links which result in sales aggregation.

Third, EPA proposes to amend the regulations to clarify mutual equity ownership, (i.e., to specify aggregating the sales of two or more firms if a third party has equity ownership of ten percent or more in each of the firms). This is a natural extension of current language which specifies that one firm will be aggregated with another if one of them owns ten percent or more of the other.

E. Changes to Emission-Data Vehicle (EDV) Mileage Requirements

EPA is proposing to establish a minimum mileage requirement for EDV's for all manufacturers. Prior to the certification procedure revisions of March 12, 1981 and October 13, 1981, manufacturers were required to accumulate 4,000 miles on each EDV to assure that its emission performance had stabilized prior to being emission tested. The 1981 certification procedure revisions allowed manufacturers to determine the minimum amount of mileage accumulation required to stabilize the vehicle's emission performance. A review of the certification data base indicates that manufacturers have typically accumulated a minimum of around 2,500 miles on EDV's to assure the vehicles emission performance had stabilized. No manufacturer accumulated less than 2,000 miles on an EDV.

EPA is somewhat concerned that in the future some manufacturers may use this flexibility in mileage accumulation to determine, whether intentionally or inadvertently, inappropriately low EDV test results. Specifically, when new, a catalyst has exceptionally high performance and is very effective at converting most hydrocarbon, carbon monoxide and oxides of nitrogen emissions coming out of the engine, thus keeping the regulated emissions atypically low. This exceptional catalyst performance quickly drops off as mileage accumulates until the catalyst conversion efficiency stabilizes and then deteriorates much more gradually with additional mileage. If a manufacturer chooses to test its EDV's prior to the stabilized emission mileage, the manufacturer could take advantage of this exceptional catalyst performance and obtain emission test results uncharacteristically low compared to a stabilized vehicle. Application of the d.f.'s to such results would predict an inappropriately low useful life emission. Allowing EDV testing before the vehicle has stabilized could mean that a vehicle

design is inappropriately certified (i.e., the certification test data predicted useful life compliance but in reality this prediction was too low). Therefore, EPA proposes to establish a minimum mileage requirement of 2,000 miles for EDV's (62 hours for catalyst equipped heavy-duty engines) regardless of manufacturer size. EPA expects that these low mileage EDV concerns would be eliminated by this minimum mileage requirement.

The impact of the proposed 2,000-mile minimum for EDV mileage accumulation on the cost of the manufacturers' certification program was analyzed. Since all current manufacturers have accumulated at least 2,000 miles on EDV's, the 2,000-mile minimum mileage requirement will not cause an impact on them. For those manufacturers using unproven emission control systems, EPA also believes that the proposed change would have little or no impact on them given that virtually all such manufacturers who have certified new designs in the past have accumulated at least 2,000 miles prior to emission data testing. In such a case, the proposed regulation change would have no impact on these manufacturers.

F. Reduction in the Number of Required Emission-Data Vehicles

The current regulations applicable to manufacturers with sales of 10,000 units or more require the testing of two EDV's in those small-volume engine families certified with assigned d.f.'s. For manufacturers with sales of less than 10,000 units, the regulations require only one EDV per engine family. EPA proposes to also require only one emission-data test vehicle for small-volume engine families certified using assigned d.f.'s by manufacturers with sales of 10,000 units or more. This proposal will reduce the regulatory burden in these manufacturers. However, given the limited diversity of designs typical of these small-volume engine families, the increased risk of inappropriately certifying an engine due to less emission test data is insignificant. This proposal will make the small-volume manufacturer's and small-volume engine family certification requirements consistent for all engine families certified with assigned d.f.'s.

G. Other Changes

The Agency proposes to standardize the worst-case EDV (engine) selection criteria contained in the certification procedures. Currently, the small-volume manufacturer worst-case EDV selection criteria differs slightly from the EDV selection criteria applicable to manufacturers whose projected sales exceed 10,000 units per year. The differences (e.g., heaviest (including options) vehicle versus heaviest equivalent test weight (including options) and largest frontal area vs. highest road load horsepower, etc.) resulted when the Agency promulgated changes to the EDV selection criteria (46 FR 50464, October 13, 1981) for large-volume manufacturers. The larger manufacturers have a more diverse product line; therefore, the Agency was more definitive than in the small-volume manufacturer certification procedure.

Changing the small-volume manufacturer EDV selection criteria to be consistent with the larger volume manufacturer vehicle selection criteria should not impact the small-volume manufacturer worst-case vehicle selections. The majority of the small-volume manufacturer engine families have only one vehicle with few, if any, options. Therefore, the same EDV would be selected under the revised selection criteria as under the original small-volume manufacturer EDV selection criteria. In addition, the Agency is proposing that larger volume manufacturers utilize the small-volume manufacturer EDV selection criteria when certifying engine families under the optional certification procedures (§ 86.090–24(e)(2)) available to larger manufacturers for small-volume engine families. Therefore, revising the small-volume manufacturer EDV selection criteria to be consistent with the larger volume manufacturer vehicle selection criteria should reduce potential confusion resulting from differing EDV selection criteria for these larger manufacturers.

IV. Regulatory Flexibility

The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of proposed Federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a preliminary Regulatory Flexibility Analysis (RFA). EPA has determined that the certification revisions proposed herein will not have a significant impact on a substantial number of small-volume manufacturers.

The actual impact of the proposed revisions on each manufacturer is affected by the emission control system chosen by the manufacturer. Under the proposed revisions, the previous certification history of the emission control system (and fuel metering system) the manufacturer chooses to use on its vehicles or engines will determine the durability demonstration requirements the manufacturer must complete. Manufacturers using proven emission control systems (and fuel metering systems) will not incur significant additional costs. Therefore, there will be no significant impact on these manufacturers.

If a manufacturer chooses on its own volition to use unproven emission control or fuel metering systems, EPA is proposing to require additional durability demonstration. In most cases it is unlikely that the manufacturer would choose to use unproven emission control or fuel metering systems. Proven emission control systems and fuel metering systems are readily available from OEM's (or the suppliers of OEM equipment), generally at less cost to the small-volume manufacturer than developing a new, unique system. However, if the small-volume manufacturer is projecting a large number of vehicle sales in an engine family the cost of system development and durability demonstration could be less, on a per-vehicle basis, than purchasing previously proven emission control systems. The manufacturer will likely make the decision to use either previously proven or unproven emission control or fuel metering systems based on economic considerations.

EPA analyzed the potential impact of the durability requirements associated with the use of unproven emission control or fuel metering systems on the small-volume manufacturer. A copy of the economic impact analysis has been placed in the public docket. Those manufacturers choosing to use unproven emission control or fuel metering systems will incur additional time and cost to complete the certification process. The amount of time required to complete a durability-data vehicle considerably lengthens the certification process. Approximately four months are required to accumulate the necessary durability mileage (e.g., 50,000 miles for light-duty vehicles) versus less than one month for EDV mileage accumulation (i.e., typically between 2,500 and 5,000 miles). EPA estimates that, for the initial year these regulations are in effect, less than 15 percent of the small-volume manufacturers may choose to use unproven emission control systems. Once these unproven systems are initially evaluated, subsequent model years should see significantly less unproven systems certified. This low incidence should not represent a significant number of small entities. Furthermore, even for those designs certified with unproven systems, the additional costs due to durability demonstration should not exceed three percent of the purchase price of an

average vehicle for that initial model year. The estimated increase in the purchase price of an average vehicle varies significantly with the number of vehicles represented by the durability demonstration. The estimated price increase for sixty typically imported vehicles is less than three percent, whereas the price increase decreases to about one-half (0.5) percent per vehicle for sales of 300 vehicles. Therefore, there is not a significant impact on these specific manufacturers.

Therefore, based on the above, the certification revisions proposed herein should not have a significant impact on a substantial number of small entities.

V. Economic Impact

Section 3(b) of Executive Order 12291 requires EPA to determine whether a rule it intends to propose or to issue is a major rule and to prepare a Regulatory Impact Analysis (RIA) for all major rules. EPA has determined that this action is not a "major rule" requiring preparation of an RIA since it will not have an annual effect on the economy of $100 million or more. Additionally, it will not result in a major increase in overall industry costs or prices. Finally, this action will not have a significant adverse effect overall on industry, competition, employment, investment, productivity, innovation, or the ability of domestic businesses to compete with foreign companies since imported vehicles are a small portion of the total number of vehicles sold in the U.S. Therefore, a preliminary RIA has not been prepared. Potential economic effects of the proposed small-volume certification rules, however, have been addressed in an economic impact analysis which was prepared in accord with the RIA requirements. The Agency's economic impact analysis for the recent rule on the importation of nonconforming motor vehicles and motor vehicle engines also is incorporated by reference herein and has been placed in the public docket for this rulemaking. The estimated first year cost for the proposed revision to the certification procedure is less than $500,000 for the industry. The estimated cost for the second and subsequent years would likely be reduced substantially by the use of data carryover. The use of maximum carryover of emission data could reduce costs to less than $6,000 for the industry. This analysis has been placed in the Public Docket for this rulemaking. The combined rules will not have an annual effect on the economy of $100 million or more.

VI. OMB Review

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are available for public inspection at Public Docket A–85–30 located in EPA's Central Docket Section (LE–131), 401 M Street SW., Washington, DC 20460.

VII. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 783) and a copy may be obtained from IPB Desk Officer Carla Levesque, Information Policy Branch, EPA, 401 M Street SW. (PM–223), Washington, DC 20460 or by calling (202) 382–2740. Comments on these requirements may be submitted to EPA and the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Authority: Secs. 202, 203, 206, 207, 208, 215, and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a).

Date: February 26, 1988.

Lee M. Thomas,

Administrator.

APPENDIX—EXPLANATION OF SPECIFIC CHANGES

Section	Change	Reason
1. Part 86, Authority	None.	
2. Add new § 86.090–1:		To implement the following changes for the 1990 model year
(a)	Revise language to specify year of applicability	First year regulations are applicable.
(d)	do	Do.
(e)	Revise language to include heavy-duty vehicles and vehicles or engines imported under 40 CFR 85.1505 and 40 CFR 85.1509.	To include all vehicle or engine categories in manufacturer's combined total sales.
3. Add new § 86.090–2	Revise to include new definitions	To include definitions of proven and unproven emission control systems.
4. Amend § 86.091–2	Incorporated definitions contained in § 86.090–2	To continue definitions.
5. Add new § 86.090–14:		
(b)(1)	Revise language to include heavy-duty vehicles and all vehicles or engines imported under 40 CFR 85.1505 and 40 CFR 85.1509.	To include all vehicles or engines in manufacturer's combined total sales.
(b)(2)	Revise language to specify aggregated relationships	To define all relationships which cause manufacturer's sales to be combined with another manufacturers.
(b)(2)(i)	Added language specifying relationships which will result in aggregation.	Do.
(b)(2)(ii)	do	Do.
(b)(2)(iii)	do	Do.
(b)(2)(iv)	do	Do.
(c)(7)(i)(A)	Revised language to specify one emission-data test vehicle (engine) per engine family.	Clarification.
(e)(7)(i)(A)(*1*)	Revised language defining worst-case vehicle selection criteria	To be consistent with criteria contained in § 86.090–24(b).
(c)(7)(i)(A)(*2*)	Revised language defining worst-case engine selection criteria	Do.
(c)(7)(i)(B)	Revised language to include minimum service accumulation distance or time.	To include new requirement of minimum service accumulation.
(c)(7)(i)(C)	Revised language to identify new requirements	To include new durability requirements.

APPENDIX—EXPLANATION OF SPECIFIC CHANGES—Continued

Section	Change	Reason
(c)(7)(i)(C)(*1*)	Add language to define durability requirements for manufacturers with aggregated total sales less than 300 units per year and to define assigned deterioration factors provided by the Administrator.	To include new durability requirements and define assigned deterioration factors.
(c)(7)(i)(C)(*2*)	Add language to define durability requirements for manufacturers with aggregated total sales of 300 through 9,999 units per year.	To include new durability requirements.
(c)(7)(i)(C)(*2*)(*i*)	Add language to define exhaust emissions durability requirements for light-duty vehicles equipped with proven emission control systems.	Do.
(c)(7)(i)(C)(*2*)(*ii*)	Add language to define exhaust emissions durability requirements for light-duty vehicles equipped with unproven emission control systems.	Do.
(c)(7)(i)(C)(*2*)(*iii*)	Add language to define durability requirements for light-duty vehicles, light-duty trucks, and heavy-duty vehicle evaporative emission and light-duty truck and heavy-duty engine exhaust emissions.	Do.
(c)(8)	Revise language to clarify maintenance requirements for durability-data vehicles or engines and maintenance instructions provided to vehicle or engine purchaser.	Clarification to make consistent § 86.088-25.
(c)(9)(i)	Redesignation of (c)(9) and added language to make section 26 of this subpart applicable.	To incorporate mileage and service accumulation requirements.
(c)(9)(ii)	Added to continue nonapplicability of section 27 of this subpart	Added due to redesignation of (c)(9).
(c)(11)(ii)(B)(*1*)	Added evaporative emission family name	Clarification.
(c)(11)(ii)(B)(*2*)	Added the word "carline"	Clarification.
(c)(11)(ii)(B)(*10*)	Added the words "surface area" and "total precious metal loading".	Clarification.
(c)(11)(ii)(B)(*18*)	Added language requiring submission of proof of insurance coverage required by 40 CFR 85.1510(b), if applicable.	New Requirement.
(c)(11)(ii)(D)(*7*)	Added language requiring statement concerning maintenance facilities and emission and emission-related service parts.	To include new requirement.
(c)(11)(ii)(E)	Added language requiring submission of information on manufacturer-determined deterioration factors.	To include new requirement.
6. Add New § 86.090-24:		To implement the following changes for 1990 model year.
(e)(1)	Deleted contents and reserve subparagraph	No longer required, requirements included in subparagraph (e)(2).
(e)(2)	Revised language to reference § 86.090-14	To include new durability and emission-data test vehicle requirements consistent with § 86.090-14.
7. Add New § 86.090-26:		To implement the following changes for the 1990 model year.
(a)(3)(i)(A)	Added language to include minimum mileage requirements, and recording and reporting of vehicle mileage.	New requirement.
(a)(3)(ii)(A)	...do	Do.
(b)(4)(i)(A)	...do	Do.
(b)(4)(ii)(A)	...do	Do.
(c)(4)	Added language specifying minimum service accumulation time for engines equipped with catalyst.	Do.
8. Add New § 86.090-35:		To implement the following changes in the 1990 model year.
(a)(1)(iii)(C)	Added language to identify new requirement	To include requirement for vacuum hose routing diagram.
(a)(1)(iii)(J)		To include labeling requirement specified in 40 CFR 85.1510.
(a)(2)(iii)(L)	...do	To include requirement for vacuum hose routing diagram.
(a)(2)(iii)(M)	...do	To include labeling requirement specified in 40 CFR 85.1510.
(a)(3)(iii)(L)	...do	To include labeling requirement specified in 40 CFR 85.1510.
(a)(4)(iii)(F)	...do	Do.
9. Amended § 86.091-35	Added language to incorporate labeling requirement implemented in the 1990 model year as defined in No. 8 above.	To implement labeling requirements as specified in No. 8 above for the 1991 model year.

For reasons set forth in the preamble, 40 CFR Part 86 is proposed to be amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for Part 86 continues to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, and 301(a)(1) of the Clean Air Act as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a)(1).

2. A new § 86.090-1, which is identical to § 86.085-1, except for revisions to paragraphs (a), (d), and (e), is added to read as follows:

§ 86.090-1 General applicability.

(a) The provisions of this subpart apply to 1990 and later model year new gasoline-fueled and diesel light-duty vehicles, 1990 and later model year new gasoline-fueled and diesel light-duty trucks, and 1990 and later model year new gasoline-fueled and diesel heavy-duty engines.

(b) *Optional applicability.* A manufacturer may request to certify any heavy-duty vehicle 10,000 pounds GVWR or less in accordance with the light-duty truck provisions. Heavy-duty engine or vehicle provisions do not apply to such a vehicle.

(c) [Reserved]

(d) *Alternative Durability Program.* For 1990 and later model year light-duty vehicles and light-duty trucks, a manufacturer may elect to participate in the Alternative Durability Program. This optional program provides an alternative method of determining exhaust emission control system durability. The general procedures and a description of the programs are contained in § 86.085-13 and specific provisions on test vehicles and compliance procedures are contained in § 86.090-24 and § 86.088 28 respectively.

(e) *Small volume manufacturers.* Special certification procedures are available for any manufacturer whose projected combined U.S. sales of light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines in its product line (including all vehicles and engines imported under the provisions of 40 CFR 85.1505 and 40 CFR 85.1509) are fewer than 10,000 units for the model year in which the manufacturer seeks certification. In order to certify its product line under these optional procedures, the small-volume manufacturer must first obtain the Administrator's approval. The manufacturer must meet the eligibility criteria specified in § 86.090–14(b) before the Administrator's approval will be granted. The small-volume manufacturer's certification procedures are described in § 86.090–14.

(f) *Optional Procedures for Determining Exhaust Opacity.* (1) The provisions of Subpart I apply to tests which are performed by the Administrator, and optionally, by the manufacturer.

(2) Measurement procedures, other than that described in Subpart I, may be used by the manufacturer provided the manufacturer satisfies the requirements of § 86.088–23(f).

(3) When a manufacturer chooses to use an alternative measurement procedure it has the responsibility to determine whether the results obtained by the procedure will correlate with the results which would be obtained from the measurement procedure in Subpart I. Consequently, the Administrator will not routinely approve or disapprove any alternative opacity measurement procedure or any associated correlation data which the manufacturer elects to use to satisfy the data requirements for Subpart I.

(4) If a confirmatory test(s) is performed and the results indicate there is a systematic problem suggesting that the data generated under an optional alternative measurement procedure do not adequately correlate with Subpart I data, EPA may require that all certificates of conformity not already issued be based on data from Subpart I procedures.

3. A new § 86.090–2 is added, to read as follows:

§ 86.090–2 Definitions.

The definitions of § 86.088–2 remain effective. The definitions listed in this section apply beginning with the 1990 model year.

Proven emission control systems are emission control systems (and fuel metering systems) that have completed full durability testing evaluation over the vehicle's or engine's useful life in some other certified engine family or are, as determined by the Administrator, of comparable functional quality and manufactured using comparable material and production techniques as systems which have been durability demonstrated in some other certified engine family.

Unproven emission control systems are emission control systems (and fuel metering systems) that have not completed full durability testing evaluation over the vehicle's or engine's useful life in some other certified engine family or are not of comparable functional quality and manufactured using comparable materials and production techniques as systems which have been durability demonstrated in some other certified engine family.

4. The introductory text in § 86.091–2 is revised to read as follow:

§ 86.091–2 Definitions.

The definitions of § 86.090–2 remain effective. The definitions listed in this section apply beginning with the 1991 model year.

* * * * *

5. A new § 86.090–14 is added to read as follows:

§ 86.090–14 Small-volume manufacturers certification procedures.

(a) The small-volume manufacturers certification procedures described in paragraphs (b) and (c) of this section are optional. Small-volume manufacturers may use these optional procedures to demonstrate compliance with the general standards and specific emission requirements contained in this subpart.

(b)(1) The optional small-volume manufacturers certification procedures apply to light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines produced by manufacturers with U.S. sales including all vehicles and engines imported under the provisions of 40 CFR 85.1505 and 40 CFR 85.1509 (for the model year in which certification is sought) of fewer than 10,000 units (LDV, LDT, HDV and HDE combined).

(2) For the purpose of determining the applicability of paragraph (b)(1) of this section, the sales the Administrator shall use shall be the aggregate of the projected or actual sales of those vehicles and/or engines in any of the groupings identified below in this subparagraph. If the aggregate sales is equal to or greater than 10,000 units, then each firm involved will be denied use of the small-volume manufacturers certification procedures, even if they operate as independent firms.

(i) Vehicles and/or engines produced by two or more firms, one of which is 10 percent or greater part-owned by another.

(ii) Vehicles and/or engines produced by two or more firms having a common corporate officer(s) who is (are) responsible for the overall direction of the companies;

(iii) Vehicles and/or engines produced by any two or more firms if a third party has equity ownership of 10 percent or more in each of the firms;

(iv) Vehicles and/or engines imported or distributed by all firms where the vehicles and/or engines were manufactured by the same person and the importer or distributer is an authorized agent of the person.

(c) Small-volume manufacturers shall demonstrate compliance with the applicable sections of this subpart as follows:

(1) Sections 1 through 11 of this subpart are applicable.

(2) Section 12 of this subpart is not applicable.

(3) Sections 13 through 20 of this subpart are applicable.

(4) Small-volume manufacturers shall include in their records all of the information that EPA requires in section 21 of this subpart. This information will be considered part of the manufacturer's application for certification. However, the manufacturer is not required to submit the information to the Administrator unless the Administrator requests it.

(5) Section 22 of this subpart is applicable except as noted below.

(i) Small-volume light-duty vehicle and light-duty truck manufacturers may satisfy the requirements of paragraph (e) of section 22 by including a statement of compliance on adjustable parameters in the application for certification. In the statement of compliance the manufacturer shall state that the limits, stops, seals, or other means used to inhibit adjustment have been designed to accomplish their intended purpose based on good engineering practice and past experience. If the vehicle parameter is adjustable the vehicle must meet emission standards with the parameter set any place within the adjustable range (Reference section 21 of this subpart).

(ii) Paragraphs (a), (b), (c), and (d) of section 22 of this subpart are not applicable.

(6) Section 23 of this subpart is applicable.

(7) Section 24 of this subpart is applicable except as noted below.

(i) Small-volume manufacturers may satisfy the requirements of paragraphs

(b) and (c) of section 24 of this subpart by:

(A) *Emission-data*—Selecting one emission-data test vehicle (engine) per engine family by the worst-case emissions criteria as follows:

(*1*) *Light-duty vehicles and light-duty trucks.* The manufacturer shall select the vehicle with the heaviest equivalent test weight (including options) within the engine family. Then within that vehicle the manufacturer shall select, in the order listed, the highest road load power, largest displacement, the transmission with the highest numerical final gear ratio (including overdrive), the highest numerical axle ratio offered in the engine family, and the maximum fuel flow calibration.

(*2*) *Heavy-duty gasoline-fueled engines.* The manufacturer shall select one emission-data engine first based on the largest displacement within the engine family. Then within the largest displacement the manufacturer shall select, in the order listed, highest fuel flow at the speed of maximum-rated torque, the engine with the most advance spark timing, no EGR or lowest EGR flow, and no air pump or lowest actual flow air pump.

(*3*) *Heavy-duty diesel engines.* The manufacturer shall select one emission data engine based on the highest fuel feed per stroke, primarily at the speed of maximum-rated torque and secondarily at rated speed.

(B) Testing light-duty vehicles or light-duty truck emission-data vehicles at any service accumulation distance of at least 2,000 miles (3,219 kilometers) or, catalyst—equipped heavy-duty emission-data engines at any service accumulation time of at least 62 hours, or non-catalyst-equipped heavy-duty engine emission-data engines at any service accumulation time determined by the manufacturer to result in stabilized emissions. The emission performance of the emission-data vehicle or engine must be stabilized prior to emission testing.

(C) *Durability data*—Satisfying the durability-data requirements by complying with the applicable procedures below:

(*1*) Manufacturers with aggregated sales which would not exceed 300 motor vehicles and motor vehicle engines per year may use assigned deterioration factors that the Administrator determines and prescribes. The factors will be the Administrator's estimate, periodically updated and published in an advisory letter or advisory circular, of the 70th percentile deterioration factors calculated using the industrywide data base of previously completed durability-data vehicles or engines used for certification. However, the manufacturer may, at its option, accumulate miles (hours) on a durability-data vehicle (engine) and complete emission tests for the purpose of establishing its own deterioration factor(s).

(*2*) Manufacturers with aggregated sales from and including 301 through 9,999 motor vehicles and motor vehicle engines per year shall use:

(*i*) For light-duty vehicle exhaust emissions from vehicles equipped with proven emission control systems, assigned deterioration factors that the manufacturer determines based on its good engineering judgment. However, the manufacturer may not determine deterioration factors less than either the manufacturer's specific average or 70th percentile deterioration factors, whichever is less (or the EPA supplied industrywide deterioration factors if the manufacturer does not have at least two data points to calculate manufacturer specific average deterioration factors.) The manufacturer specific average deterioration factors are the average of the deterioration factors from all engine families, within the same vehicle/engine-fuel usage category (e.g., gasoline-fueled light-duty vehicle, etc.), previously certified to the same emission standards by the manufacturer. The manufacturer's specific 70th percentile deterioration factors are calculated using the same data base. The manufacturer may, at its option, accumulate miles on durability-data vehicles and complete emission tests for the purpose of establishing its own deterioration factors.

(*ii*) For light-duty vehicle exhaust emissions from vehicles equipped with unproven emission control systems, deterioration factors that the manufacturer determines from official certification durability data generated on vehicles run on engine families representing a minimum of 25 percent of the manufacturer's sales equipped with unproven emission control systems. The sales projections are to be based on total sales projected for each engine/system combination. The durability-data vehicle (engine) mileage accumulation and emission tests are to be conducted according to section 26. The manufacturer must develop deterioration factors by generating durability data in accordance with section 26 of this subpart on a minimum of 25 percent of the manufacturer's projected sales (by engine/system combination) that is equipped with unproven emission control systems. The manufacturer must complete the 25 percent durability requirement before the remainder of the manufacturer's sales equipped with unproven emission control systems is certified using manufacturer-determined deterioration factors. The manufacturer may, at its option, accumulate miles on durability-data vehicles and complete emission tests for the purpose of establishing its own deterioration factors on the remaining sales.

(*iii*) For light-duty vehicle, light-duty truck, and heavy-duty vehicle evaporative emissions and light-duty truck, and heavy-duty engine exhaust emissions, deterioration factors determined in accordance with section 24 of this subpart.

(ii) Paragraphs (d) and (e) of section 24 of this subpart are not applicable.

(8) Section 25 of this subpart is applicable to maintenance performed on durability-data light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines when the manufacturer completes durability-data vehicles or engines; section 38 of this subpart is applicable to the recommended maintenance the manufacturer includes in the maintenance instructions furnished the purchasers of new motor vehicles and new motor vehicle engines under section 38 of this subpart.

(9)(i) Section 26 of this subpart is applicable if the manufacturer completes durability-data vehicles or engines.

(ii) Section 27 of this subpart is not applicable.

(10) Sections 28 and 29 of this subpart are applicable.

(11)(i) Section 30 of this subpart is applicable, except for paragraph (a) (2) and (b) of that section. In the place of these paragraphs, small-volume manufacturers shall comply with paragraphs (c)(11) (ii) through (11)(v) of this section, as shown below.

(ii) Small-volume manufacturers shall submit an application for certification containing the following:

(A) The names, addresses, and telephone numbers of the persons the manufacturer authorizes to communicate with us.

(B) A brief description of the vehicles (or engines) covered by the certificate (the manufacturers' sales data book or advertising, including specifications, may satisfy this requirement for most manufacturers). The description shall include, as a minimum, the following items as applicable:

(*1*) Engine evaporative family names and vehicle (or engine) configurations.

(*2*) Vehicle carlines or engine models to be listed on the certificate of conformity.

(3) The test weight and horsepower setting for each vehicle or engine configuration.

(4) Projected sales.

(5) Combustion cycle.

(6) Cooling mechanism.

(7) Number of cylinders.

(8) Displacement.

(9) Fuel system type.

(10) Number of catalytic converters, volume, composition, surface area, and total precious metal loading.

(11) Method of air aspiration.

(12) Thermal reactor characteristics.

(13) Suppliers' and/or manufacturer's name and model number of any emission-related items of the above, if purchased from a supplier who uses the items in its own certified vehicles(s) or engine(s).

(14) A list of emission component part numbers.

(15) Drawings, calibration curves, and descriptions of emission-related components, including those components regulated under paragraph (e) of section 22 of this subpart, and schematics of hoses and other devices connecting these components.

(16) Vehicle adjustments or modifications necessary for light-duty trucks, to assure that they conform to high-altitude standards.

(17) A description of the light-duty vehicles and light-duty trucks which are exempted from the high-altitude emission standards.

(18) Proof that the manufacturer has obtained or entered an agreement to purchase, when applicable, the insurance policy, required by § 85.1510(b). The manufacturer may submit a copy of the insurance policy or purchase agreement as proof that the manufacturer has obtained or entered an agreement to purchase the insurance policy.

(C) The results of all emission tests the manufacturer performs to demonstrate compliance with the applicable standards.

(D)(1) The following statement signed by the authorized representative of the manufacturer: "The vehicles (or engines) described herein have been tested in accordance with [list the applicable Subparts A, B, D, I, N, or P] of Part 86, Title 40, United States Code of Federal Regulations, and on the basis of those tests are in conformance with that subpart. All of the data and records required by that subpart are on file and are available for inspection by the EPA Administrator. We project the total U.S. sales of vehicles (engines) subject to this subpart to be fewer than 10,000 units."

(2) A statement as required by and contained in paragraph (c)(5) of this section signed by the authorized representative of the manufacturer.

(3) A statement that the vehicles or engines described in the manufacturer's application for certification are not equipped with auxiliary emission control devices which can be classified as a defeat device as defined in section 2 of this subpart.

(4) A statement of compliance with section 206(a)(3) of the Clean Air Act.

(5) A statement that, based on the manufacturer's engineering evaluation and/or emission testing, the light-duty vehicles comply with emission standards at high altitude unless exempt under paragraph (h) of section 8 of this subpart.

(6) A statement that, based on the manufacturer's engineering evaluation and/or emission testing, the light-duty trucks sold for principal use at designated high-altitude locations comply with the high-altitude emission requirements and that all other light-duty trucks are at least capable of being modified to meet high-altitude standards unless exempt under paragraph (g)(2) of section 9 of this subpart.

(7) A statement affirming that the manufacturer will provide a list of emission and emission-related service parts, including part number designations and sources of parts, to the vehicle purchaser for all emission and emission-related parts which might affect vehicle emission performance throughout the useful life of the vehicle. Secondly, it must state that qualified service facilities will be available to service its vehicles. In addition, the manufacturer must indicate that the vehicle purchaser will be provided information identifying the closest authorized service facility to the point of sale if service facilities are not available at the point of sale. Such information should also be made available to the Administrator upon request.

(E) Manufacturers utilizing deterioration factors determined by the manufacturer based on its good engineering judgment (regarding paragraph (e)(7)(i)(C) of this section) shall provide a description of the method(s) used by the manufacturer to determine the deterioration factors.

(iii) If the manufacturer meets requirements of this subpart, the Administrator will issue a certificate of conformity for the vehicles or engines described in the application for certification.

(iv) The certificate will be issued for such a period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary to assure that any vehicle or engine covered by the certificate will meet the requirements of the Act and of this subpart.

(v)(A) If, after a review of the statements and descriptions submitted by the manufacturer, the Administrator determines that the manufacturer has not met the applicable requirements, the Administrator shall notify the manufacturer in writing of his intention to deny certification, setting forth the basis for his determination. The manufacturer may request a hearing on the Administrator's determination.

(B) If the manufacturer does not request a hearing or present the required information the Administrator will deny certification.

(12) Sections 31 and 32 of this subpart are not applicable.

(13) Under section 33 of this subpart, small-volume manufacturers are covered by the following.

(i) Small-volume manufacturers may make production changes (running changes) without receiving the Administrator's prior approval. The manufacturer shall assure (by conducting emission tests as it deems necessary) that the affected vehicles (engines) remain in compliance with the requirements of this part.

(ii) The manufacturer shall notify the Administrator within seven days after implementing any production-related change (running change) that would affect vehicle emissions. This notification shall include any changes to the information required under paragraph (c)(11)(ii) of this section. The manufacturer shall also amend as necessary its records required under paragraph (c)(4) of this section to conform with the production design change.

(14) Section 34 of this subpart is not applicable.

(15) Sections 35 through 39 of this subpart are applicable.

6. A new § 86.090–24, which is identical to § 86.085–24, except for revisions to paragraphs (e)(1) and (e)(2), is added as follows.

§ 86.090–24 Test vehicles and engines.

(a) (1) The vehicles or engines covered by an application for certification will be divided into groupings of engines which are expected to have similar emission characteristics throughout their useful life. Each group of engines with similar emission characteristics shall be defined as a separate engine family.

(2) To be classed in the same engine family, engines must be identical in all the following respects:

(i) The cylinder bore center-to-center dimensions.

(ii)—(iii) [Reserved]

(iv) The cylinder block configuration (air cooled or water cooled; L–6, 90° V–8, etc.).

(v) The location of the intake and exhaust valves (or ports).

(vi) The method of air aspiration.

(vii) The combustion cycle.

(viii) Catalytic converter characteristics.

(ix) Thermal reactor characteristics.

(x) Type of air inlet cooler (e.g., intercoolers and after-coolers) for diesel heavy-duty engines.

(3)(i) Engines identical in all the respects listed in paragraph (a)(2) of this section may be further divided into different engine families if the Administrator determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(A) The bore and stroke.

(B) The surface-to-volume ratio of the nominally dimensioned cylinder at the top dead center positions.

(C) The intake manifold induction port size and configuration.

(D) The exhaust manifold port size and configuration.

(E) The intake and exhaust valve sizes.

(F) The fuel system.

(G) The camshaft timing and ignition or injection timing characteristics.

(ii) Light-duty trucks and heavy-duty engines produced in different model years and distinguishable in the respects listed in paragraph (a)(2) of this section shall be treated as belonging to a single engine family if the Administrator requires it, after determining that the engines may be expected to have similar emission deterioration characteristics.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in paragraphs (a)(2) and (a)(3) of this section, the Administrator will establish families for those engines based upon those features most related to their emission characteristics. Engines that are eligible to be included in the same engine family based on the criteria in paragraphs (a)(2) and (a)(3)(i) of this section may be further divided into different engine families if the manufacturer determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(i) The dimension from the center line of the crankshaft to the center line of the camshaft.

(ii) The dimension from the center line of the crankshaft to the top of the cylinder block head face.

(iii) The size of the intake and exhaust valves (or ports).

(5) The gasoline-fueled vehicles covered by an application for certification will be divided into groupings which are expected to have similar evaporative emission characteristics throughout their useful life. Each group of vehicles with similar evaporative emission characteristics shall be defined as a separate evaporative emission family.

(6) For gasoline-fueled light-duty vehicles and light-duty trucks to be classed in the same evaporative emission family, vehicles must be similar with respect to:

(i) Type of vapor storage device (e.g., canister, air cleaner, crankcase).

(ii) Basic canister design.

(iii) Fuel system.

(7) Where vehicles are of a type which cannot be divided into evaporative emission families based on the criteria listed above, the Administrator will establish families for those vehicles based upon the features most related to their evaporative emission characteristics.

(8)(i) If the manufacturer elects to participate in the Alternative Durability Program, the engine families covered by an application for certification shall be grouped based upon similar engine design and emission control system characteristics. Each of these groups shall constitute a separate engine family group.

(ii) To be classed in the same engine family group, engine families must contain engines identical in all of the following respects:

(A) The combustion cycle.

(B) The cylinder block configuration (air-cooled or water-cooled; L–6, V–8, rotary, etc.).

(C) Displacement (engines of different displacement within 50 cubic inches or 15 percent of the largest displacement and contained within a multi-displacement engine family will be included in the same engine family group).

(D) Catalytic converter usage and basic type (non-catalyst, oxidation catalyst only, three-way catalyst equipped).

(9) Engine families identical in all respects listed in paragraph (a)(8) of this section may be further divided into different engine family groups if the Administrator determines that they are expected to have significantly different exhaust emission control system deterioration characteristics.

(10) A manufacturer may request the Administrator to include in an engine family group, engine families in addition to those grouped under the provisions of paragraph (a)(8) of this section. This request must be accompanied by information the manufacturer believes supports the inclusion of these additional engine families.

(11) A manufacturer may combine into a single engine family group those light-duty vehicle and light-duty truck engine families which otherwise meet the requirements of paragraphs (a)(8) through (a)(10) of this section.

(12) The gasoline-fueled heavy-duty vehicles covered by an application for certification will be divided into groupings of vehicles on the basis of physical features which are expected to affect evaporative emissions. Each group of vehicles with similar features shall be defined as a separate evaporative emission family.

(13) For gasoline-fueled heavy-duty vehicles to be classed in the same evaporative emission family, vehicles must be identical with respect to:

(i) Method of fuel/air metering (i.e., carburetion versus fuel injection).

(ii) Carburetor bowl fuel volume, within a 10 cc range.

(14) For gasoline-fueled heavy-duty vehicles to be classed in the same evaporative emission control system, vehicles must be identical with respect to:

(i) Method of vapor storage.

(ii) Method of carburetor sealing.

(iii) Method of air cleaner sealing.

(iv) Vapor storage working capacity, within a 20g range.

(v) Number of storage devices.

(vi) Method of purging stored vapors.

(vii) Method of venting the carburetor during both engine off and engine operation.

(viii) Liquid fuel hose material.

(ix) Vapor storage material.

(15) Where gasoline-fueled heavy-duty vehicles are types which cannot be divided into evaporative emission family-control system combinations based on the criteria listed above, the Administrator will establish evaporative emission family-control system combinations for those vehicles based on features most related to their evaporative emission characteristics.

(b) *Emission data*—(1) *Emission-data vehicles.* Paragraph (b)(1) of this section applies to light-duty vehicle and light-duty truck emission-data vehicles.

(i) Vehicles will be chosen to be operated and tested for emission data based upon engine family groupings. Within each engine family, one test vehicle will be selected based on the following criteria: The Administrator shall select the vehicle with the heaviest equivalent test weight (including options) within the family. Then within

that vehicle the Administrator shall select, in the order listed, the highest road-load power, largest displacement, the transmission with the highest numerical final gear ratio (including overdrive), the highest numerical axle ratio offered in that engine family, and the maximum fuel flow calibration.

(ii) The Administrator shall select one additional test vehicle from within each engine family. The vehicle selected shall be the vehicle expected to exhibit the highest emissions of those vehicles remaining in the engine family. If all vehicles within the engine family are similar the Administrator may waive the requirements of this paragraph.

(iii) Within an engine family and exhaust emission control system, the manufacturer may alter any emission-data vehicle (or other vehicles such as including current or previous model year emission-data vehicles, fuel economy data vehicles, and development vehicles provided they meet emission-data vehicles' protocol) to represent more than one selection under paragraphs (b)(1) (i), (ii), (iv), or (vii) of this section.

(iv) If the vehicles selected in accordance with paragraphs (b)(1) (i) and (ii) of this section do not represent each engine-system combination, then one vehicle of each engine-system combination not represented will be selected by the Administrator. The vehicle selected shall be the vehicle expected to exhibit the highest emissions of those vehicles remaining in the engine family.

(v) For high-altitude exhaust emission compliance for each engine family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the vehicle expected to exhibit the highest emissions from the nonexempt vehicles selected in accordance with paragraphs (b)(1) (ii), (iii), and (iv) of this section or,

(B) In lieu of testing vehicles according to paragraph (b)(1)(v)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate,

(*1*) All light-duty vehicles not exempt under § 86.087–8(h) comply with the emission standards at high altitude; and

(*2*) Light-duty trucks sold for principal use at designated high-altitude locations comply with the high-altitude emission requirements unless exempt under § 86.088–9(g)(2), and that all light-duty trucks sold for principal use at low altitude, which are not exempt under § 86.088–9(g)(2), are capable of being modified to meet high-altitude standards.

(vi) If 90 percent or more of the engine family sales will be in California, a manufacturer may substitute emission-data vehicles selected by the California Air Resources Board criteria for the selections specified in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iv) of this section.

(vii) (A) Vehicles of each evaporative emission family will be divided into evaporative emission control systems.

(B) The Administrator will select the vehicle expected to exhibit the highest evaporative emissions, from within each evaporative family to be certified, from among the vehicles represented by the exhaust emission-data selections for the engine family, unless evaporative testing has already been completed on the vehicle expected to exhibit the highest evaporative emissions for the evaporative family as part of another engine family's testing.

(C) If the vehicles selected in accordance with paragraph (b)(1)(vii)(B) of this section do not represent each evaporative emission control system, then the Administrator will select the highest expected evaporative emission vehicle from within the unrepresented evaporative system.

(viii) For high-altitude evaporative emission compliance for each evaporative emission family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the one nonexempt vehicle previously selected under paragraphs (b)(1)(vii) (B) or (C) of this section which is expected to have the highest level of evaporative emissions when operated at high altitude or

(B) In lieu of testing vehicles according to paragraph (b)(1)(viii)(A) of this section, a manufacturer may provide a statement in its application of certification that based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate,

(*1*) All light-duty vehicles not exempt under § 86.087–8(h) comply with the emission standards at high altitude, and

(*2*) Light-duty trucks sold for principal use at designated high-altitude locations comply with the high-altitude emission requirements unless exempt under § 86.088–9(g)(2), and that all light-duty trucks sold for principal use at low-altitude, which are not exempt under § 86.088–9(g)(2), are capable of being modified to meet high-altitude standards.

(ix) Vehicles selected under paragraph (b)(1)(v)(A) of this section may be used to satisfy the requirements of paragraph (b)(1)(viii)(A) of this section.

(x) (Light-Duty Trucks Only) (A) The manufacturer may reconfigure any of the low-altitude emission-data vehicles to represent the vehicle configuration required to be tested at high altitude.

(B) The manufacturer is not required to test the reconfigured vehicle at low altitude.

(2) *Gasoline-fueled heavy-duty emission-data engines.* Paragraph (b)(2) of this section applies to gasoline-fueled heavy-duty engines.

(i)—(ii) [Reserved]

(iii) The Administrator shall select a maximum of two engines within each engine family based upon features indicating that they may have the highest emission levels of the engines in the engine family as follows:

(A) The Administrator shall select one emission-data engine first based on the largest displacement within the engine family. Then within the largest displacement the Administrator shall select, in the order listed, highest fuel flow at the speed of maximum-rated torque, the engine with the most advanced spark timing, no EGR or lowest EGR flow, and no air pump or lowest actual flow air pump.

(B) The Administrator shall select one additional engine, from within each engine family. The engine selected shall be the engine expected to exhibit the highest emissions of those engines remaining in the engine family. If all engines within the engine family are similar, the Administrator may waive the requirements of this paragraph.

(iv) If the engines selected in accordance with paragraphs (b)(2) (ii) and (iii) of this section do not represent each engine displacement-exhaust emission control system combination, then one engine of each engine displacement-exhaust emission control system combination not represented shall be selected by the Administrator.

(v) Within an engine family/displacement/control system combination, the manufacturer may alter any emission-data engine (or other engine including current or previous model year emission-data engines and development engines provided they meet the emission-data engines' protocol) to represent more than one selection under paragraph (b)(2)(iii) of this section.

(3) *Diesel heavy-duty emission-data engines.* Paragraph (b)(3) of this section applies to diesel heavy-duty emission-data vehicles.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family,

the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into groups based upon their exhaust emission control systems. One engine of each engine system combination shall be run for smoke emission data and gaseous emission data. Either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torque and secondarily at rated speed, will usually be selected. If there are military engines with higher fuel rates than other engines in the same engine system combinations, then one military engine shall also be selected. The engine with the highest fuel feed per stroke will usually be selected.

(iii) The Administrator may select a maximum of one additional engine within each engine-system combination based upon features indicating that it may have the highest emission levels of the engines of that combination. In selecting this engine, the Administrator will consider such features as the injection system, fuel system, compression ratio, rated speed, rated horsepower, peak torque speed, and peak torque.

(iv) Within an engine family control system combination, the manufacturer may alter any emission-data engine (or other engine such as including current or previous model year emission-data engines and development engines provided they meet the emission-data engines' protocol) to represent more than one selection under paragraphs (b)(3) (ii) and (iii) of this section.

(c) *Durability data*—(1) *Light-duty vehicle durability-data vehicles.* Paragraph (c)(1) of this section applies to light-duty vehicle durability-data vehicles.

(i) A durability-data vehicle will be selected by the Administrator to represent each engine-system combination. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with that control-system combination in that engine family and will be designated by the Administrator as to transmission type, fuel system, inertia weight class, and test weight.

(ii) A manufacturer may elect to operate and test additional vehicles to represent any engine-system combination. The additional vehicles must be of the same engine displacement, transmission type, fuel system and inertia weight class as the vehicle selected for that engine-system combination in accordance with the provisions of paragraph (c)(1)(i) of this section. Notice of an intent to operate and test additional vehicles shall be given to the Administrator no later than 30 days following notification of the test fleet selection.

(2) *Light-duty trucks.* Paragraph (c)(2) of this section applies to vehicles, engines, subsystems, or components used to establish exhaust emission deterioration factors for light-duty trucks.

(i) The manufacturer shall select the vehicles, engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether vehicles, engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use vehicles, based on good engineering judgment.

(3) *Heavy-duty engines.* Paragraph (c)(3) of this section applies to engines, subsystems, or components used to establish exhaust emission deterioration factors for heavy-duty engines.

(i) The manufacturer shall select the engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use engines, based on good engineering judgment.

(d) For purposes of testing under § 86.090–26 (a)(9) or (b)(11), the Administrator may require additional emission-data vehicles (or emission-data engines) and durability-data vehicles (light-duty vehicles only) identical in all material respects to vehicles (or engines) selected in accordance with paragraphs (b) and (c) of this section, *provided* that the number of vehicles (or engines) selected shall not increase the size of either the emission-data fleet or the durability-data fleet by more than 20 percent or one vehicle (or engine), whichever is greater.

(e)(1) [Reserved]

(2) Any manufacturer may request to certify engine families with combined total sales of fewer than 10,000 light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines utilizing the procedures contained in § 86.090–14 of this subpart for emission-data vehicle selection and determination of deterioration factors. The deterioration factors shall be applied only to entire engine families.

(f) In lieu of testing an emission-data or durability-data vehicle (or engine) selected under paragraph (b) or (c) of this section, and submitting data therefore, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data and/or fuel evaporative emission data, as applicable on a similar vehicle (or engine) for which certification has previously been obtained or for which all applicable data required under § 86.088–23 has previously been submitted.

(g)(1) This paragraph applies to light-duty vehicles and light-duty trucks, but does not apply to the production vehicles selected under paragraph (h) of this section.

(2) (i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, may be equipped with an item (whether that item is standard equipment or an option), the full estimated weight of that item shall be included in the curb weight computation of each vehicle available with that item in that carline, within that engine-system combination.

(ii) Where it is expected that 33 percent or less of the carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment of an option), no weight for that item will be added in computing the curb weight for any vehicle in that carline, within that engine system combination, unless that item is standard equipment on the vehicle.

(iii) In the case of mutually exclusive options, only the weight of the heavier option will be added in computing the curb weight.

(iv) Optional items weighing less than three pounds per item need not be considered.

(3)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, then such items shall actually be installed (unless excluded under paragraph (g)(3)(ii) of this section) on all emission-data and durability-data vehicles of that carline, within that engine-system combination, on which the items are intended to be offered in production. Items that can reasonably be expected to influence emissions are: air conditioning, power steering, power brakes, and other items determined by the Administrator.

(ii) If the manufacturer determines by test data or engineering evaluation that the actual installation of the optional

equipment required by paragraph (g)(3)(i) of this section does not effect the emissions or fuel economy values, the optional equipment need not be installed on the test vehicle.

(iii) The weight of the options shall be included in the design curb weight and also be represented in the weight of the test vehicles.

(iv) The engineering evaluation, including any test data, used to support the deletion of optional equipment from test vehicles, shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(4) Where it is expected that 33 percent or less of a carline within an engine-system combination will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, that item shall not be installed on any emission-data vehicle or durability-data vehicle of that carline, within that engine-system combination, unless that item is standard equipment on that vehicle or specifically required by the Administrator.

(h) Alternative Durability Program durability-data vehicles. This section applies to light-duty vehicle and light-duty truck durability-data vehicles selected under the Alternative Durability Program described in § 86.085–13.

(1) In order to update the durability data to be used to determine a deterioration factor for each engine family group, the Administrator will select durability-data vehicles from the manufacturer's production line. Production vehicles will be selected from each model year's production for those vehicles certified using the Alternative Durability Program procedures.

(i) The Administrator shall select the production durability-data vehicle designs from the designs that the manufacturer offers for sale. For each model year and for each engine family group, the Administrator may select production durability-data vehicle designs of equal number to the number of engine families within the engine family group, up to a maximum of three vehicles.

(ii) The production durability-data vehicles representing the designs selected in paragraph (h)(1)(i) of this section will be randomly selected from the manufacturer's production. The Administrator will make these random selections unless the manufacturer (with prior approval of the Administrator) elects to make the random selections.

(iii) The manufacturer may select additional production durability-data vehicle designs from within the engine family group. The production durability-data vehicles representing these designs shall be randomly selected from the manufacturer's production in accordance with paragraph (h)(1)(ii) of this section.

(iv) For each production durability-data vehicle selected under paragraph (h)(1) of this section, the manufacturer shall provide to the Administrator (before the vehicle is tested or begins service accumulation) the vehicle identification number. Before the vehicle begins service accumulation the manufacturer shall also provide the Administrator with a description of the durability-data vehicle as specified by the Administrator.

(v) In lieu of testing a production durability-data vehicle selected under paragraph (h)(1) of this section, and submitting data therefore, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data from a production vehicle of the same configuration for which all applicable data has previously been sutmitted.

(2) If, within an existing engine family group, a manufacturer requests to certify vehicles of a new design, engine family, emission control system, or with any other durability-related design difference, the Administrator will determine if the existing engine family group deterioration factor is appropriate for the new design. If the Administrator cannot make this determination or deems the deterioration factor not appropriate, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles with the new design under the provisions of paragraph (h)(1) of this section.

(3) If a manufacturer requests to certify vehicles of a new design that the Administrator determines are a new engine family group, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles of that design under the provisions of paragraph (h)(1) of this section.

7. A new § 86.090–26, which is identical to § 86.084–26, except for revisions to paragraphs (a)(3)(i)(A), (a)(3)(ii)(A), (b)(4)(i)(A), and (b)(4)(ii)(A), is added as follows:

§ 86.090–26 Mileage and service accumulation; emission measurements.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles.

(2) The procedure for mileage accumulation will be the Durability Driving Schedule as specified in Appendix IV to this part. A modified procedure may also be used if approved in advance by the Administrator. Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.129, the manufacturer may elect to conduct the respective emission tests at higher loaded vehicle weight.

(3) *Emission-data vehicles.* Unless as otherwise provided for in § 86.088–23(a), emission-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. The manufacturer must accumulate a minimum of 2,000 miles (3,219 kilometers) on each test vehicle within an engine family. All test vehicle mileage must be accurately determined, recorded, and reported to the Administrator. Any vehicle used to represent emission-data vehicle selections under § 86.090–24(b)(1) shall be equipped with an engine and emission control system that has accumulated the mileage the manufacturer chose to accumulate on the test vehicle. Fuel economy data generated from certification vehicles selected in accordance with § 86.090–24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006–87(c). Complete exhaust and evaporative (if required) emission tests shall be conducted for each emission-data vehicle selection under § 86.090–24(b)(1). The Administrator may determine under § 86.090–24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1) (v) or (viii) shall be conducted at the mileage (2,000 mile

minimum) at which the engine-system combination is stabilized for emission testing under high-altitude conditions.

(C) Exhaust and evaporative emissions tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1) (i), (ii), (iii), (iv), or (vii)(B) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing under low-altitude conditions.

(D) For each engine family, the manufacturer will either select one vehicle previously selected under § 86.090–24(b)(1) (i) through (iv) to be tested under high-altitude conditions or provide a statement in accordance with § 86.090–24(b)(1)(v). Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. In addition, any emission control device used to conform with the emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(ii) *Diesel.* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. The manufacturer must accumulate a minimum of 2,000 miles (3,219 kilometers) on each test vehicle within an engine family. All test vehicle mileage must be accurately determined, recorded, and reported to the Administrator. Any vehicle used to represent emission-data vehicle selections under § 86.090–24(b)(1) shall be equipped with an engine and emission control system that has accumulated the mileage the manufacturer chose to accumulate on the test vehicle. Fuel economy data generated from certification vehicles selected in accordance with § 86.090–24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006–87(c). Complete exhaust emission tests shall be conducted for each emission-data vehicle selection under § 86.090–24(b)(1). The Administrator may determine under § 86.090–24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1)(v) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing under high-altitude conditions.

(C) Exhaust and evaporative emissions tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1) (i) through (iv) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing under low-altitude conditions.

(D) For each engine family, the manufacturer will either select one vehicle previously selected under § 86.090–24(b)(1) (i) through (iv) to be tested under high-altitude conditions or provide a statement in accordance with § 86.090–24(b)(1)(v). Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. In addition, any emission control device used to conform with the emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(4) *Durability-data vehicles.* Unless as otherwise provided for in § 86.088–23(a), durability-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* Each gasoline-fueled durability-data vehicle selected by the Administrator or elected by the manufacturer under § 86.090–24(c)(1) shall be driven, with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objective of this procedure. Complete exhaust emission tests shall be made on all durability-data vehicles selected by the Administrator or elected by the manufacturer under § 86.090–24(c) at test point mileage intervals that the manufacturer determines. At a minimum, complete exhaust emission tests shall be made at 5,000 miles, and at 50,000 miles. The mileage interval between test points must be of equal length for the interval between zero miles and 5,000 miles, the final interval, and any interval before or after testing conducted in conjunction with vehicle maintenance as specified in § 86.088–25(a)(10). The Administrator may determine under § 86.090–24(f) that no testing is required.

(ii) *Diesel.* Each diesel durability-data vehicle shall be driven, with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objectives of the procedure. Complete emission tests (see §§ 86.106 through 86.145) shall be made at test point mileage intervals that the manufacturer determines. At a mininum complete exhaust emission tests shall be made at 5,000 miles and at 50,000 miles. The mileage interval between test points must be of equal length for the interval between zero miles and 5,000 miles, the final interval, and any interval before or after testing conducted in conjunction with vehicle maintenance as specified in § 86.088–25(a)(10).

(iii) The manufacturer may, at its option, alter the durability-data vehicle at the selected test point to represent emission-data vehicle(s) within the same engine/system combination and perform emission tests on the altered vehicle. Upon completion of emission testing, the manufacturer may return the test vehicle to the durability-data vehicle configuration and continue mileage accumulation.

(5) (i) All tests required by this subpart on emission-data vehicles shall be conducted at a mileage equal to or greater than the mileage the manufacturer determines under paragraph (a)(3) of this section.

(ii) All tests required by this subpart on durability-data vehicles shall be conducted within 250 miles of each of the test points.

(6)(i) (A) The manufacturer may conduct multiple tests at any test point at which the data are intended to be used in the deterioration factor. At each test point where multiple tests are conducted, the test results from all valid tests shall be averaged to determine the data point to be used in the deterioration factor calculation, except under paragraph (a)(6)(i)(B) of this section. The test results from emission tests performed before maintenance affecting emissions shall not be averaged with test results after the maintenance.

(B) The manufacturer is not required to average multiple tests if the manufacturer conducts no more than three tests at each test point and if the number of tests at each test point is equal. All test points must be treated the same for all exhaust pollutants.

(ii) The results of all emission testing shall be supplied to the Administrator. The manufacturer shall furnish to the Administrator explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. Tests between test points may be conducted as required by the Administrator. Data from all tests (including voided tests) may be submitted weekly to the Administrator, but shall be air posted or delivered to the Administrator within 7 days after completion of the test. In addition, all test data shall be compiled and provided to the Administrator in accordance with

§ 86.088–23. Where the Administrator conducts a test on a durability-data vehicle at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(iii) The results of all emission tests shall be rounded, using the "Rounding Off Method" specified in ASTM E 29–67, to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(7) Whenever a manufacturer intends to operate and test a vehicle which may be used for emission or durability data, the manufacturer shall retain in its records all information concerning all emissions tests and maintenance, including vehicle alterations to represent other vehicle selections. For emission-data vehicles, this information shall be submitted, including the vehicle description and specification information required by the Administrator, to the Administrator following the emission-data test. For durability-data vehicles, this information shall be submitted following the 50,000-mile test.

(8) Once a manufacturer submits the information required in paragraph (a)(7) of this section for a durability-data vehicle, the manufacturer shall continue to run the vehicle to 50,000 miles, and the data from the vehicle will be used in the calculations under § 86.088–28. Discontinuation of a durability-data vehicle shall be allowed only with the consent of the Administrator.

(9)(i) The Administrator may elect to operate and test any test vehicle during all or any part of the mileage accumulation and testing procedure. In such cases, the manufacturer shall provide the vehicle(s) to the Administrator with all information necessary to conduct this testing.

(ii) The test procedures in §§ 86.106 through 86.145 will be followed by the Administrator. The Administrator will test the vehicles at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(iii) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other vehicles of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

(10) Emission testing of any type with respect to any certification vehicle other than that specified in this part is not allowed except as such testing may be specifically authorized by the Administrator.

(11) This section does not apply to testing conducted to meet the requirements of § 86.088–23(b)(2).

(b)(1) Paragraph (b) of this section applies to light-duty trucks.

(2) There are three types of mileage or service accumulation applicable to light-duty trucks:

(i) Mileage or service accumulation on vehicles, engines, subsystems, or components selected by the manufacturer under § 86.090–24(c)(2)(i). The manufacturer determines the form and extent of this mileage or service accumulation, consistent with good engineering practice, and describes it in the application for certification.

(ii) Mileage accumulation of the duration selected by the manufacturer on emission-data vehicles selected under § 86.090–24(b)(1). The procedure for mileage accumulation will be the Durability Driving Schedule as specified in Appendix IV to this part. A modified procedure may also be used if approved in advance by the Administrator. Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.129, the manufacturer may elect to conduct the respective emission tests at the test weight corresponding to the higher loaded vehicle weight.

(iii) Service or mileage accumulation which may be part of the test procedures used by the manufacturer to establish evaporative emission deterioration factors.

(3) Exhaust emission deterioration factors will be determined on the basis of the mileage or service accumulation described in paragraph (b)(2)(i) of this section and related testing, according to the manufacturer's procedures.

(4) Each emission-data vehicle shall be operated and tested as follows:

(i) *Gasoline-fueled.* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. The manufacturer must accumulate a minimum of 2,000 miles (3,219 kilometers) on each test vehicle within an engine family. All test vehicle mileage must be accurately determined, recorded, and reported to the Administrator. Any vehicle used to represent emission-data vehicle selections under § 86.090–24(b)(1) shall be equipped with an engine and emission control system that has accumulated the mileage the manufacturer chose to accumulate on the test vehicle. Fuel economy data generated from certification vehicles selected in accordance with § 86.090–24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006–87(c). Complete exhaust emission tests shall be conducted for each emission-data vehicle selection under § 86.090–24(b)(1). The Administrator may determine under § 86.090–24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.090–24 (b)(1)(v) or (b)(1)(viii) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing or at 6,436 kilometers (4,000 miles) under high-altitude conditions.

(C) Exhaust and evaporative emission tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1) (ii), (iii), (iv)(A), or (vii)(B) shall be conducted at the mileage (2,000 mile minimum) at which the engine system combination is stabilized for emission testing or at 6,436 kilometer (4,000 mile) test point under low-altitude conditions.

(D) For each new engine family, the manufacturer will select one vehicle previously selected under § 86.090–24 (b)(1)(ii) through (b)(1)(iv) to be tested under high-altitude conditions. If the manufacturer recommends adjustments or modifications in order to conform to emission standards at high altitude, such adjustments or modifications shall be made to the test vehicle (in accordance with the instructions to be provided to the ultimate purchaser) before being tested under high-altitude conditions.

(ii) *Diesel.* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. The manufacturer must accumulate a minimum of 2,000 miles (3,219

kilometers) on each test vehicle within an engine family. All test vehicle mileage must be accurately determined, recorded, and reported to the Administrator. Any vehicle used to represent emission-data vehicle selections under § 86.090–24(b)(1) shall be equipped with an engine and emission control system that has accumulated the mileage the manufacturer chose to accumulate on the test vehicle. Fuel economy data generated from certification vehicles selected in accordance with § 86.090–24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006–87(c). Complete exhaust emission tests shall be conducted for each emission-data vehicle selection under § 86.090–24(b(1). The Administrator may determine under § 86.090–24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1)(v) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing or at the 6,436 kilometer (4,000 mile) test point under low-altitude conditions.

(C) Exhaust and evaporative emission tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1) (ii), (iii), and (iv) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing or at the 6,436 kilometer (4,000 mile) test point under low-altitude conditions.

(D) For each engine family, the manufacturer will select one vehicle previously selected under § 86.090–24 (b)(1)(ii) through (b)(1)(iv) to be tested under high-altitude conditions. If the manufacturer recommends adjustments or modifications in order to conform to emission standards at high-altitude, such adjustments or modifications shall be made to the test vehicle (in accordance with the instructions to be provided to the ultimate purchaser) before being tested under high-altitude conditions.

(iii) [Reserved]

(iv) All tests required by this subpart on emission-data vehicles shall be conducted at a mileage equal to or greater than the mileage the manufacturer determines under paragraph (b)(4) of this section.

(c)(1) Paragraph (c) of this section applies to heavy-duty engines.

(2) There are two types of service accumulation applicable to heavy-duty engines:

(i) Service accumulation on engines, subsystems, or components selected by the manufacturer under § 86.090–24(c)(3)(i). The manufacturer determines the form and extent of this service accumulation, consistent with good engineering practice, and describes it in the application for certification.

(ii) Dynamometer service accumulation on emission-data engines selected under § 86.090–24(b)(2) or § 86.090–24(b)(3). The manufacturer determines the engine operating schedule to be used for dynamometer service accumulation, consistent with good engineering practice. A single engine operating schedule shall be used for all engines in an engine family-control system combination. Operating schedules may be different for different combinations.

(3) Exhaust emission deterioration factors will be determined on the basis of the service accumulation described in paragraph (b)(2)(i) of this section and related testing, according to the manufacturer's procedures.

(4) The manufacturer shall determine, for each engine family, the number of hours at which the engine system combination is stabilized (no less than 62 hours for catalyst equipped) for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested a record of the rationale used in making this determination. The manufacturer may elect to accumulate 125 hours on each test engine within an engine family without making a determination. Any engine used to represent emission-data engine under selections § 86.090–24(b)(2) shall be equipped with an engine system combination that has accumulated at least the number of hours determined under this paragraph. Complete exhaust emission tests shall be conducted for each emission-data engine selection under § 86.090–24(b)(2). Evaporative emission controls need not be connected provided normal operating conditions are maintained in the engine induction system. The Administrator may determine under § 86.090–24(f) that no testing is required.

(d)(1) Paragraph (d) of this section applies to both light-duty trucks and heavy-duty engines.

(2)(i) The results of all emission testing shall be supplied to the Administrator. The manufacturer shall furnish to the Administrator explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. Tests between test points may be conducted as required by the Administrator. Data from all tests (including voided tests) may be submitted weekly to the Administrator but shall be air posted or delivered to the Administrator within 7 days after completion of the test. In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.088–23. Where the Administrator conducts a test on a durability-data vehicle at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(ii) The results of all emission tests shall be recorded and reported to the Administrator. These test results shall be rounded, in accordance with ASTM E 29–67, to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(3) Whenever a manufacturer intends to operate and test a vehicle (or engine) which may be used for emission data, the manufacturer shall retain in its records all information concerning all emissions tests and maintenance, including vehicle (or engine) alterations to represent other vehicle (or engine) selections. This information shall be submitted, including the vehicle (or engine) description and specification information required by the Administrator, to the Administrator following the emission-data test.

(4)—(5) [Reserved]

(6) Emission testing of any type with respect to any certification vehicle or engine other than that specified in this subpart is not allowed except as such testing may be specifically authorized by the Administrator.

8. A new § 86.090–35, which is identical to § 86.088–35, except for the addition of paragraphs (a)(1)(iii)(I), (a)(1)(iii)(J), (a)(2)(iii)(L), (a)(2)(iii)(M), (a)(3)(iii)(L), and (a)(4)(iii)(F) to read as follows:

§ 86.090–35 Labeling.

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards and family particulate emission limits and family NO_x emission limits, as appropriate of this subpart, shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a certificate of conformity under § 86.088–30(a).

(1) *Light-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches), engine, family identification and evaporative family identification;

(D) Engine tuneup specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family particulate emission limit, as applicable), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation;

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to light-duty vehicles;

(F) For vehicles which are part of the diesel particulate averaging program, the family particulate emission limit to which the vehicle is certified;

(G) For vehicles that have been exempted from compliance with the emission standards at high altitude, as specified in § 86.087–8(h):

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only;

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude, and

(*3*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart V do not apply when the vehicle is tested at high altitude; and

(H) For vehicles that have been exempted from compliance with the emission standards at low altitude, as specified in § 86.087–8(i):

(*1*) A highlighted statement (e.g., underscore or boldface letters) that the vehicle is certified to applicable emission standards at high altitude only; and

(*2*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart V do not apply when the vehicle is tested at low altitude.

(I) The vacuum hose routing diagram applicable to the vehicles.

(J) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

(2) *Light-duty trucks.* (i) A legible, permanent label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label.

(A) The label heading: Important Vehicle Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family particulate limit, as appropriate, including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation. If adjustments or modifications to the vehicle are necessary to insure compliance with emission standards (or family particulate limit, or family NO_x emission limit, as appropriate) at either high or low altitude, the manufacturer shall either include the instructions for such adjustments on the label, or indicate on the label where instructions for such adjustments may be found. The label shall indicate whether the engine tune-up or adjustment specifications are applicable to high altitude, low altitude, or both;

(E) The prominent statement: "This vehicle conforms to U.S. EPA regulations applicable to 19__ Model Year New Light-Duty Trucks."

(F) If the manufacturer is provided an alternate useful life period under the provisions of § 86.088–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of _____ years or ____ miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (e.g., hours, or miles only).

(G) A statement, if applicable, that the adjustments or modifications indicated on the label are necessary to ensure emission control compliance at the altitude specified.

(H) A statement, if applicable, that the high-altitude vehicle was designated or modified for principal use at high altitude. This statement must be affixed by the manufacturer at the time of assembly or by any dealer who performs the high-altitude modification or adjustment prior to sale to an ultimate purchaser.

(I) For vehicles that have been exempted from compliance with the high-altitude emission standards, as specified in § 86.089–9(g)(2).

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only.

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude, and

(*3*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart I do not apply when the vehicle is tested at high altitude:

(J) For vehicles which are included in the diesel particulate averaging program, the family particulate emission limit to which the vehicle is certified.

(K) For vehicles which are included in the light-duty truck NO_x averaging program, the family NO_x— emission limit to which the vehicle is certified.

(L) The vacuum hose routing diagram applicable to the vehicles.

(M) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

(3) *Heavy-duty engines.* (i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in the vehicle

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(A) The label heading: Important Engine Information.

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family and model designations;

(D) Date of engine manufacture (month and year). The manufacturer may, in lieu of including the date of manufacture on the engine label, maintain a record of the engine manufacture dates. The manufacturer shall provide the date of manufacture records to the Administrator upon request.

(E) Engine specifications and adjustments as recommended by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation;

(F) For gasoline-fueled engines the label should include the idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), and valve lash.

(G) For diesel engines the label should include the advertised hp at rpm, fuel rate at advertised hp in mm3/stroke, valve lash, initial injection timing, and idle speed.

(H) The prominent statement: "This engine conforms to U.S. EPA regulations applicable to 19 __ Model Year New Heavy-Duty Engines."

(I) If the manufacturer is provided with an alternate useful life period under the provisions of § 86.088–21(f), the prominent statement: "This engine has been certified to meet U.S. EPA standards for a useful-life period _____ of miles or _____ hours of operation, whichever occurs first. This engine's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than miles or hours (e.g., years, or hours only).

(J) *For diesel* engines. The prominent statement: "This engine has a primary intended service application as a _____ heavy-duty diesel engine." (The primary intended service applications are light, medium, and heavy, as defined in § 86.085–2.)

(K) For gasoline-fueled engines one of the following statements, as applicable:

(*1*) For engines certified to the emission standards under § 86.088–10 (a)(1)(i), the statement: "This engine is certified for use in all heavyduty vehicles."

(*2*) For engines certified under the provisions of § 86.088–10(a)(3)(i), the statement: "This engine is certified for use in all heavy-duty vehicles under the special provision of 40 CFR 86.088–10(a)(3)(i)."

(*3*) For engines certified to the emission standards under § 86.088–10 (a)(1)(ii), the statement: "This engine is certified for use only in heavy-duty vehicles with a gross vehicle weight rating above 14,000 lbs."

(L) Engines granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

(iv) The label may be made up of one or more pieces; *Provided,* that all pieces are permanently attached to the same engine or vehicle part as applicable.

(4) (i) *Gasoline-fueled heavy-duty vehicles.* A permanent legible label shall be affixed in a readily visible position in the engine compartment. If such vehicles do not have an engine compartment, the label required in paragraphs (a)(4) and (g)(1) of this section shall be affixed in a readily visible position on the operator's enclosure or on the engine.

(ii) The label shall be affixed by the vehicle manufacturer ohas been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numericals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Evaporative family identification;

(D) The maximum nominal fuel tank capacity (in gallons) for which the evaporative control system is certified; and,

(E) An unconditioned statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to gasoline/fueled heavy-duty vehicles.

(F) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable state emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards (or family particulate emission limits, or family NO_x emission limits, as appropriate) of this subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth on the DOT label or an additional label located in proximity to the DOT label and affixed as described in 40 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrast with the background of the label:

(i) The Heading: "Vehicle Emission Control Information."

(ii) (A) *For light-duty vehicles,* the statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to 19__ Model Year New Motor Vehicles."

(B) *For light-duty trucks: (1)* The statement: "This vehicle conforms to U.S. EPA regulations applicable to 19 __ Model Year New Light-Duty Trucks."

(2) If the manufacturer is provided an alternate useful life period under the provisions of § 86.088–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of _____ years or _____ miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (e.g., hours, or miles only).

(iii) One of the following statements, as applicable, in letters and numerals not less than six thirty-seconds of an inch high and of a color that contrasts with the background of the label:

(A) For all vehicles certified as noncatalyst-equipped: NON-CATALYST"

(B) For all vehicles certified as catalyst-equipped which are included in

a manufacturer's catalyst control program for which approval has been given by the Administrator: "CATALYST—APPROVED FOR IMPORT"

(C) For all vehicles certified as catalyst-equipped which are not included in a manufacturer's catalyst control program for which prior approval has been given by the Administrator: "CATALYST"

(2) In lieu of selecting either of the labeling options of paragraph (c)(1) of this section, the manufacturer may add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d) Incomplete light-duty trucks or incomplete heavy-duty vehicles optionally certified as light-duty trucks shall have the following prominent statement printed on the label required by paragraph (a)(2) of this section in lieu of the statement required by paragraph (a)(2)(iii)(E) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 19__ Model Year New Light-Duty Trucks when completed at a maximum curb weight of _____ pounds or at a maximum gross vehicle weight rating of _____ pounds or with a maximum frontal area of _____ square feet."

(e) Incomplete heavy-duty vehicles having a gross vehicle weight rating of 8,500 pounds or less shall have one of the following statements printed on the label required by paragraph (a)(3) of this section in lieu of the statement required by paragraph (a)(3)(iii)(H) of this section: "This engine conforms to U.S. EPA regulations applicable to 19__ Model Year Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area of greater than 45 square feet."

(f) The manufacturer of any incomplete light-duty vehicle or light-duty truck sha11 notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR Part 568.

(g)(1) Incomplete gasoline-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19__ Model Year New Gasoline-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed _____ gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.090–35(g)(2)."

(2) Persons wishing to add fuel tank capacity beyond the maximum specified on the label required in paragraph (g)(1) of this section shall:

(i) Increase the amount of fuel tank vapor storage material according to the following function:

$$Cap_f = Cap_i \left(\frac{T.\ Vol.}{Max.\ Vol.} \right)$$

Where:

Cap_f = final amount of fuel tank vapor storage material, grams.

Cap_i = initial amount of fuel tank vapor storage material, grams.

T. Vol. = total fuel tank volume of completed vehicle, gallons.

Max. Vol. = maximums fuel tank volume as specified on the label required in paragraph (g)(1) of this section, gallons.

(ii) Use, if applicable, hosing for fuel vapor routing which is at least as impermeable to hydrocarbon vapors as that used by the primary manufacturer.

(iii) Use vapor storage material with the same absorptive characteristics as that used by the primary manufacturer.

(iv) Connect, if applicable, any new hydrocarbon storage device to the existing hydrocarbon storage device in series such that the original hydrocarbon storage device is situated between the fuel tank and the new hydrocarbon storage device. The original hydrocarbon storage device shall be sealed such that vapors cannot reach the atmosphere. The elevation of the original hydrocarbon storage device shall be equal to or lower than the new hydrocarbon storage device.

(v) Submit a written statement to the Administrator that paragraphs (g)(2)(i) through (g)(2)(iv) of this section have been complied with.

(3) If applicable, the Administrator will send a return letter verifying the receipt of the written statement required in paragraph (g)(2)(v) of this section.

9. Section 86.091–35 is amended by adding paragraph (a)(l)(iii)(I), (a)(1)(iii)(J), (a)(2)(iii)(L), (a)(2)(iii)(M), (a)(3)(iii)(N), and (a)(4)(iii)(F) to read as follows:

§ 86.091–35 Labeling.

(a) * * *

(1) * * *

(iii) * * *

(I) The vacuum hose routing diagram applicable to the vehicles.

(J) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

* * * * *

(2) * * *

(iii) * * *

(L) The vacuum hose routing diagram applicable to the vehicles.

(M) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

* * * * *

(3) * * *

(iii) * * *

(N) Engines granted final admission under § 85.1509 must comply with the labeling requirements contained in § 85.1510.

* * * * *

(4) * * *

(iii) * * *

(F) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

* * * * *

[FR Doc. 88–4734 Filed 3–8–88; 8:45 am]

BILLING CODE 6560–50–M